



INDIAN CONSTITUTIONAL DOCUMENTS  
*MUNSHI PAPERS*  
VOLUME II





# INDIAN CONSTITUTIONAL DOCUMENTS MUNSHI PAPERS

Volume II

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# HISTORICAL INTRODUCTION

BY

**Dr. A. K. Majumdar**

*Editor-in-Charge*

## 1

It has been said that religion began with fear of God, and with fear of law civilization began. The fountain-head of all our laws is our Constitution; it is the epitome of our heritage which has to be passed on to the future generations. Therefore, a detailed study of its history becomes a desideratum, and with this view we have arranged the documents in this and the subsequent volumes to facilitate the task of the student of constitutional history.

This volume of the *Constitutional Documents, Munshi Papers* ends with the historic ceremony of August 15, 1947. Up to this date the Constituent Assembly was primarily concerned with the preliminaries, and the main work on constitution-making began after independence, with Dr. B. R. Ambedkar as Minister of Law. Therefore, the documents included in this volume are of a miscellaneous nature, and are probably of more interest to the students of history than to those of constitution.

The subsequent volumes will contain documents on the main topics of our Constitution, namely, Minorities, President, Fundamental Rights, Judiciary, Official Language, Emergency Provisions, Citizenship, Union Constitution, Provincial Constitution, Distribution of Powers and Financial Structure, Finance, and Miscellaneous.

## 2

It is often asked as to why our Constitution has retained so many important features of the Government of India Act, 1935. The main reason was that many of the important members of the Constituent Assembly like Dr. Shyama Prasad Mukherjee, Sri C. Rajagopalachari, Pandit Govind Ballabh Pant, Sri B. G. Kher, Sri Biswanath Das, Dr. K. M. Munshi and others had practical experience of the working of the Act of 1935, and therefore were aware of its merits. How this Act worked in the Provincial field has been described by Dr. Munshi in

the *Pilgrimage to Freedom*; he has also described there the working of the Montagu-Chelmsford Act of 1919 under which he served as a member of the Bombay Legislative Council.

The fact is that the Constitution of India is the product of an historical process. During the days of nationalist struggle, the leaders were often heard to say that no act done by them could be unconstitutional since India had no constitution. This was true to the extent that the Indians had not evolved nor sanctioned the constitution under which they lived; but there were from the beginning certain checks on autocracy, which gradually evolved into a constitution. For the British had brought with them some of their traditional concepts and institutions as much as possible or necessary to curb autocracy.

## 3

British connection with India began when Bombay became a British possession in 1661; and in 1672, Governor Aungier opened the first British Court with due pomp and ceremony. This was soon found to be inadequate and so the East India Company obtained under a Royal Charter granted on September 24, 1726, the right to establish Courts of Mayor and Aldermen to try all civil cases. From the decision of the Mayor's court appeal lay to the President and Council, and then, under certain circumstances to His Majesty's Privy Council.

When as the result of the Battle of Plassey (1757) the East India Company obtained control over an extensive territory, it became necessary to control their functionaries and the Regulating Act was passed in 1773 and took effect from October 20, 1774. This Act did not provide for a constitution, but it brought the administration of the East India Company under Parliamentary control, which lasted till 1947. Moreover, the impeachment of Warren Hastings, the first Governor-General (1774-85), established the precedent that the Company's servants were liable for their action and at all times responsible to an elected legislature.

The most important feature of the Regulating Act, was to associate a Council with the Governors of the three Presidencies, namely, Bengal, Bombay and Madras. Moreover, the Governors in the Councils of Bombay and Madras were brought under the control of the Governor-General in Council of Bengal. Though this control was not absolute, it opened the way for the ultimate unification of the Government of India.

The Regulating Act of 1773, also established the Supreme Court of Judicature at Calcutta, which began to function in January 1775. The

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Judges of this new court were independent of the East India Company, and the court was a King's Court. The Judges of the Supreme Court, who were all trained British lawyers (unlike the judges of the Mayor's court who were the Company's servants), followed as far as possible the English rules and procedure.<sup>1</sup> But, what is more important, they began to issue writs of *habeas corpus* and *mandamus*. Though such writs were at first issued rather indiscriminately, it was decided in 1781 in *Rex v. Ramgobind Mitter and others* that the powers of the Justices of the King's Bench of England had been given to the Justices of the Supreme Court severally, and they could issue the writ of *habeas corpus* severally, but the Supreme Court as a court did not possess any such power. In 1824, Supreme Courts were established in Madras and Bombay under the *Indian Bishops and Courts Act of 1823* with the same power and privilege as those enjoyed by the Supreme Court at Fort William, that is, Calcutta. Thus only these three Supreme Courts (from 1861, High Courts) were vested with the power of issuing within their original jurisdiction the writs of *habeas corpus*, *mandamus*, *certiorari* and *quo warranto*, by virtue of their being courts of record and under section 45 of the Special Relief Act which only applied to them. Even these High Courts were unable to issue these writs beyond their original jurisdiction (a small city area) and no other High Court had such powers with the result that except in these three Presidency Towns the machinery for enforcing the rights was the tardy remedy under Sec. 491 of the Criminal Procedure Code.

In 1858, in *Damodar Das v. Hurukchund*, the Court decided that it could not issue a writ of *habeas corpus ad testificandum* to bring up a prisoner confined by the warrant of the Governor-General in Council under Regulation III of 1818. In the same year, in another case, namely *in re. Tucket Roy*, it was decided that the Governor-General in Council might issue his warrant to arrest and detain, without a regular trial, British subjects within and without the jurisdiction of the Supreme Court, and such warrant was considered a good return to a writ of *habeas corpus*. This position with regard to Fundamental Rights persisted till the end of the British period, and has practically been accepted in our Constitution.<sup>2</sup>

Another feature of our Constitution namely the judicial review (Article 21) can be traced to the Regulating Act of 1773. Article 36 of

1. Impey's wholesale use of English law and legal system was not an unmixed blessing. For example Impey sentenced Nundkumar to death for forgery on which it was observed: "If it were legal to try, to convict, and execute Nundkumar for forgery on the Statute of George II, it must, as we conceive, be equally legal to try, convict, and to punish the Subahdar of Bengal and all his Court for bigamy under the Statute of James II." *Touchet's Report*, General Appendix No. 3, quoted by I.B. Banerjee: *The Supreme Court in Conflict*, Calcutta, 1940, p. 40.
2. Articles 21 and 22 (3) (b).

the Act was rather loosely drafted, and the Supreme Court, under the guidance of the Chief Justice Sir Elijah Impey, assumed overruling power over legislation. This was rectified by Pitt's India Act of 1784 which bestowed revisionary power to the "Commissioners for the Affairs of India," popularly known as the Board of Control, the forerunner of the Secretary of State's Council, the President of the Board being the prototype of the Secretary of State. It is interesting to speculate, however, as to what would have happened if Impey had acted with moderation and allowed tradition to develop on the basis of precedents. That, however, was not to be, and Impey's experiment was never again attempted in India till the Constituent Assembly discussed the question of 'Judicial review', noted below.

4

Another noteworthy feature of the Regulating Act of 1773, was the vesting of authority in the Governor-General in Council. Subsequent Acts regulated the relation between the Governor-General and his Council, and the Governor-General was in a sense all-powerful till the end of the British Raj. The Council, however, was a check on absolute autocracy, and could with slight modification become nearly as effective as a Cabinet. This was proved when in 1946 the Congress and then the Muslim League joined the Executive Council.

However, the Charter Act of 1793, empowered the Governor-General to override the majority of his Council "in cases of high importance, and essentially affecting the publick interest and welfare" or "when any measure shall be proposed . . . whereby the interests of the . . . Company or the safety or tranquillity of the British possessions in India, or any part thereof, are or may, in the judgment of the Governor-General or of the said Governors . . . be essentially concerned." (Article XLVII). This special power the Governor-General and the Governors enjoyed till the end, and though it was bitterly criticized by the Congress leaders, the principle was adopted in the Emergency Provisions (Part XVIII) of the Constitution. Dr. Munshi has dealt with this in the *Pilgrimage to Freedom*.

The next important Act was the Charter Act of 1833 by which the Governor-General in Council was empowered to make "Laws and Regulations" for the whole of India, withdrawing from the Governors of Madras and Bombay all legislative functions, but leaving to them the right only of proposing draft schemes. This was a decisive step towards the administrative unity of India, and, quite appropriately, the Governor-

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General, under this Act, received the title of 'Governor-General of India'. Later, as we shall see, Acts were passed distributing power between the Centre and the Provinces. The problem facing the British, namely, the extent to which provincial autonomy could be granted consistent with the basic unity of government faced the Constituent Assembly also, and our Constitution became a quasi-federation with ample overriding power for the Central Government. In a true federation, like the U.S.A., the federating units come together and bestow certain powers on the Central or Federal Government. While in India, for more than a century devolution of power took place from the Centre to the Provinces, so that, instead of delegating power to the Centre, the Provinces were enjoying delegated power. This historical process was somewhat reflected in our Constitution, in which power flows from the Centre to the units.

Another significant change in the government of India brought about by the Charter Act of 1833, was the appointment of a Law Member on the Governor-General's Council. Hitherto the Council had consisted of three members, and now a fourth or 'extraordinary member' was added who was not entitled to sit or vote except at meetings for making laws and regulations.<sup>3</sup> He was to be appointed by the Directors, subject to the approval of the Crown, from among persons other than servants of the Company. As stated above, the Governor-General in Council was empowered to make 'Laws and Regulations' for the whole of India, and such Acts were to have the force of the Acts of Parliament, though liable to be disallowed by the Court of Directors and also required to be laid before Parliament.

The first Law Member, Thomas Babington Macaulay,<sup>4</sup> brought with him the prevailing British attitude of legislators towards the executive. H. T. Prinsep,<sup>5</sup> a Member of the Council proposed that all draft laws which were sent by Provincial Governments should be considered by the Executive Council, for amendment, discussion and final drafting, before submission to the Legislative Council. To this proposal Macaulay wrote a great minute (June 13, 1835) in the course of which he denied

3. This disability of the Law Member was removed by the Charter Act of 1853.

4. Thomas Babington Macaulay, later Lord Macaulay (1800-1859) the great historian, was by turn a Commissioner of the Board of Control, in 1832, and its Secretary (1833). He helped to enact the Charter Act of 1833, and made a great speech on the second reading of the Bill. He worked as Law Member to the Government of India from 1834 to his resignation in 1838. During his tenure of office he served as the head of the Law Commission and was largely responsible for the preparation of the Indian Penal Code and the Code of Criminal Procedure, both of which are in use now. His great minute on education in India changed the system of education substituting English studies for oriental languages and literature. This had the most profound impact on the future history of India.

5. Henry Thoby Prinsep (1792-1878), I.C.S., acted as a Member of the Supreme Council temporarily in 1805 and substantively from 1840 to 43 when he retired. He should not be confused with his youngest brother James Prinsep (1799-1840), the Assay-Master at the Calcutta Mint, who deciphered the Brahmi script and for the first time read the Asokan inscriptions.



both the expediency and the legality of such an arrangement, which excluded the Law Member from any deliberation affecting a proposed bill. He therefore claimed, both for himself and his successors, the legal right to record their opinions and cast their votes not merely in the final passing of a law, but on every question which may arise respecting a law in any of its stages. The addition of a Law Member, according to Macaulay, had converted the Executive Council into a Legislative Council, and any usurpation of the function of the latter by the former body would be contrary to the statute under which India was governed.<sup>6</sup>

Today Macaulay's dictum may appear to be a trifle pompous, if not inappropriate. In fact, the Law Member later became a member of the Executive Council, and could hardly be distinguished from other members. But the principle of the independence of the legislature, which formed the basis of Macaulay's attitude, took deep root in Indian soil and led to profound political changes. Possibly the great historian was mindful not only of the present realities of the situation but also of the future implications.

5

When the time for renewal of the Charter arrived Lord Dalhousie, the Governor-General (January 1848-February 1856), wrote a minute pleading for the entire reconstruction of the legislature. His arguments were that, civilian members of the Council, who were usually taken from Bengal cadre, "could know nothing about the local legislation required for Madras and Bombay, and have no skill in technical difficulties which attach to legislative enactments." Neither the Commander-in-Chief nor the Military Member of the Council could "by any possibility know anything about the matter," and the Governor-General was too busy with executive affairs to pay much attention to legislation. Even the fourth Member, Dalhousie added, "although profoundly versed in English law, is as profoundly ignorant of all laws prevailing in India, whether Hindu or Mahomedan regulations or acts. He knows absolutely nothing of the inhabitants, the tenures, the practice of the habits of the country to which he comes and from which he is probably withdrawn when he has mastered these difficulties."<sup>7</sup>

It was on the basis of Dalhousie's recommendation, that the Act of 1853 provided for a legislative council, and thus was planted the seed

6. Minute, June 13, 1835. Dharker : *Lord Macaulay's Legislative Minutes*, pp. 22-32; 155-58 quoted in A.C. Banerjee : *Indian Constitutional Documents*, 3rd Edition, Calcutta, 1961, I. pp. 289-293.

7. See Warner : *Life of Dalhousie*, II. pp. 218-33; quoted by Banerjee *op. cit.*, I, p. 298.

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which later developed into a mighty tree. Dalhousie, of course, had no idea of a legislature with Indian members, and according to his recommendation judges and persons with at least ten years service in India were eligible to be appointed as members of the legislative council. Of the six new members called 'legislative members' who were added to the Council, two were English Judges of the Calcutta Supreme Court, and the other four were officials appointed by the Governments of Madras, Bombay, Bengal and Agra; the Law Member, henceforth, became a full executive member. The Governor-General was to appoint a member of the Legislative Council as the Vice-President to preside over its meetings in his absence, but no Law or Regulation passed by the Legislative Council were to have 'force or be promulgated' until the same had been assented to by the Governor-General. This Act, according to Montagu and Chelmsford, "was the first recognition of the principle of local representation in the Indian legislature."<sup>8</sup>

The Legislative Council created by the Act of 1853 began to consider itself as "the nucleus of a constitutional parliament", and issued 136 standing orders and published its debates.<sup>9</sup>

This had Dalhousie's support, and in a letter dated September 18, 1854, he rightly pointed out to Sir Charles Wood,<sup>10</sup> then President of the Board of Control, that a legislative body consisting of 'English Gentlemen' will assert their 'legislative independence.' This was precisely what had happened in the U.S.A., less than a century ago; and Sir Charles Wood in his reply (December 23, 1854) categorically disclaimed intention to establish an independent legislature in India. The Legislative Council, like the Secretaries, Wood explained, were aids to lighten the labour of the Governor-General in the legislative sphere, just as the Executive Council did in the executive sphere; and in both cases the Governor-General's power remained absolute.<sup>11</sup> Dalhousie, however, refused to accept this position, and in his reply dated March 16, 1855, while he admitted that the Governor-General had the right to veto a

8. Edwin Montagu (1879-1924) was Under-Secretary of State for India from 1910 to 1914 and Secretary of State for India from July 1919 to March 1922. He paid two visits to India, the first as Under-Secretary from October 1912 to March 1913, the second as Secretary of State from November 1917 to April 1918. It was during his second visit that he prepared jointly with Lord Chelmsford, the Viceroy of India, the celebrated *Report on Indian Constitutional Reform* which formed the basis of the Government of India Act, 1919.

Frederick John Napier Thesiger, third Baron and first Viscount Chelmsford (1863-1935), was Governor of Queensland from 1905 to 1909, and of New South Wales from 1909 to 1913; Viceroy of India from 1916 to 1921.

9. *Parliamentary Papers*, Vol. 43. (1861), No. 307. Official Despatch, para 5.

10. Sir Charles Wood, First Viscount Halifax (1800-85), grandfather of Lord Irwin, Viceroy of India, was President, Board of Control, 1852-55 and Secretary of State for India, 1859 to 1866. Lord Canning, Governor-General (1856), was the first Viceroy (appointed 1 November, 1858). He retired in 1862.

11. A. C. Banerjee, *op. cit.*, Vol. I, pp. 324-25.

Bill passed by the Legislative Council, pleaded his inability to control its deliberation in contravention of the statute.<sup>12</sup>

This nascent 'parliament' enjoyed a very brief life, and it was correctly pointed out by Sir Charles Wood during the debate on the Indian Councils Bill of 1861 that, "of all governing or legislative bodies, none is so dangerous or so mischievous as one which represents a dominant race ruling over an extended Native population."<sup>13</sup> However, it marked the culmination of a phase in British rule in India, namely, the control of both executive and legislative government in India exclusively by the British residents in India. Soon the trend was reversed.

6

Possibly the change would have come in any case, but the Mutiny of 1857 hastened it and the result was the Government of India Act of 1858. The fundamental change brought about by the Act and the reasons underlying it were explained by Lord Palmerston while introducing the Bill when he declared:

The principle of our political system is that all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown; but in this case the chief functions in the government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much India stock. I think that that of itself is a most objectionable arrangement.... It is in accordance with the principles and practice of our constitution, as it would be in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct....<sup>14</sup>

12. *Ibid.*

13. For Sir Charles Wood's speech see P. Mukherjee : *Indian Constitutional Documents*, (1600-1918), 2nd Edition, Calcutta, 1918, I, pp. 211-222. The sentence quoted here is from p. 218.

14. P. Mukherjee, *op. cit.*, pp. 149-62.

It was in this speech that Lord Palmerston stated : "It is indeed remarkable that those regions in which science and art may be said to have first dawned upon mankind should now be subject to the rule of a people inhabiting islands which at a time, when these eastern regions enjoyed as high a civilization and as great prosperity as that age could offer, were in a state of utter barbarism".

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Thus the dual control which had been in existence since 1784 was abolished and the Parliament assumed full responsibility for the Government of India, which lasted till 1937, when provincial autonomy was introduced.

However, for the evolution of the Indian Constitution, the Indian Councils Act of 1861 was more important than the Act of 1858. The Act of 1861 was meant to improve the legislative system in India, and replaced what the Chief Justice of Calcutta had derisively described as the "Anglo-Indian House of Commons" with another type of legislative council to which Indians were for the first time admitted. The legislative councils were restored in Madras and Bombay by expanding the Governor's executive council on the same lines as the Governor-General's. The Governor-General was also directed to establish a legislative council for Bengal, and similar councils for the North-West Provinces (Uttar Pradesh) and the Punjab which were set up in 1886 and 1887 respectively. But the Governor-General's Council could legislate for the whole of India, and the Provincial Council for the whole of the Province except in certain matters for which the Governor-General's sanction had to be obtained. This was the beginning of Provincial Autonomy, for, with successive measures for legislative reforms, increasingly more powers were delegated to the Province.

Sir Bartle Frere in a well-known minute recommending the introduction of Indian members to the legislative councils compared it to the *darbar* of an Indian Prince where "very considerable license of speech is permitted, and it is in fact the channel from which the ruler learns how his measures are likely to affect his subjects, and may hear of discontent before it becomes disaffection."<sup>15</sup> Some modern historians are also inclined to take the same view of the legislative councils set up under the Act of 1861,<sup>16</sup> but it seems that a better appreciation of the position was given by Lord Macdonnell in his *Courts and Legislative Authorities in India*, where, after describing the Legislative Councils as Committees for the purpose of making laws, he pointed out the implication of associating the non-officials with the process of law making. Although the government enacted the law, private legislation being unknown, yet the 'public' had a right to make itself heard, and the executive was bound to defend its legislation. It might not be wrong to describe the laws made in the legislatures as government orders; still the manner

15. P. Mukherjee, *op. cit.*, Introduction p. xxvi.

16. C. H. Philips : *The Evolution of India & Pakistan 1858-1947*, London, 1962 p. 27. But according to Prof. R. Coupland, "the Act of 1861 may be said to have introduced the representative principle into the Indian Constitution". R. Coupland : *The Indian Problem, 1833-1935: Report on the Constitutional Problem in India*, Indian Reprint, 1945, Part I, p. 21. However, dealing with the Act of 1909, Prof. Coupland states : "The Legislative Councils were still regarded as *darbars* rather than as parliaments....." *Ibid*, p. 25.

of their enactment ensured publicity and discussion, and the fact that a law once passed could not be changed except with the same deliberative process and could operate against the executive and in favour of an individual<sup>17</sup> raised the status of the Legislative Councils above that of the *durbars*. Moreover, the Councils did not give its members the same right of ventilating their grievances as they could in a *durbar*, nor could they impugn the executive. In short the Legislative Council could only deliberate on the subject placed before them. This limited their authority, but saved the Legislative Councils from the risk of degenerating into a purposeless amorphous body like a *durbar*.

The setting up of these legislative councils had another aspect, perhaps more important than was realized by the British statesmen of the time. The Anglo-Saxon conception of legislation by deliberative assemblies was entirely foreign to Indians, both Hindus and Muslims.<sup>18</sup> To them the introduction of the representative principle and a written constitution, however rudimentary, was a great and welcome innovation. Moreover, it came at a time when English education was spreading, and the educated class was beginning to understand the functioning of the parliamentary system of government, and they began to demand it, more particularly after the Indian National Congress was formed in 1885.

As a result of this demand, the Indian Councils Act of 1892 was passed, a landmark in India's constitutional history. Three main changes were introduced by this Act, namely, the right of financial criticism by the discussion of the annual budget, and the right of asking questions, and the addition to the number of members in both the Central and Provincial Councils. Thus the number of members to be nominated to the Governor-General's Legislative Council was now fixed at

17. P. Mukherjee, *op. cit.* p. xxvi-xxvii.

In 1861, the Indian High Courts Act was passed, though the High Courts were established by Letters Patent in 1865.

18. This observation does not apply to local self-government for which the Indians had a long tradition. This was recognized by the British Government which stated in a resolution dated 31 August 1864: "The people of this country are perfectly capable of administering their own local affairs. The municipal feeling is deeply rooted in them. The village communities, each of which is a little republic, are the most abiding of Indian institutions. They maintained the frame-work of society while successive swarms of invaders swept over the country. In the cities, also, the people cluster in their wards, trade guilds, and panchayats, and show much capacity for corporate action". *The Gazette of India Extraordinary*, 14th September, 1864; pp. 12-13. Philips *op. cit.*, p. 43.

Parliamentary form of government however, is based on quite different tradition. As a group of eminent British parliamentarians put it: "Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel". *Joint Committee on Indian Constitutional Reform*, Volume I, part I (Report), p. 11, para 20. None of these conditions existed in India even in a rudimentary form.

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minimum 10 to maximum 16, for Madras and Bombay from 8 to 20, not more than 20 for Bengal and not more than 15 for the United Provinces. The Governor-General in Council with the approval of the Secretary of State was authorized to frame rules for such nomination; and by subsequent regulations the principle of election was tentatively introduced, and the proportion of non-officials increased beyond the minimum laid down by the Act of 1861. As the non-official members were nominated on the basis of 'recommendation' of various public bodies, such as Corporations, Universities, Chambers of Commerce etc., the elective principle was tacitly introduced though formally ignored. Indeed, during the debate on the Bill, Mr. Gladstone had pointed out: "While the language of the Bill cannot be said to embody the elective principle, it is very peculiar language, unless it is intended to pave the way for the adoption of that principle."<sup>19</sup> However, the principle underlying the Act was clearly expressed by Lord Lansdowne, the Viceroy (1888-94), in a speech before the Legislative Council in the course of which he said that the Act did not introduce a complete or symmetrical system of representation but represented a *bona fide* endeavour to render the Legislative Councils more representative of the different sections of the Indian community than they were under the Act of 1861. For this purpose the Government would use the machinery of election wherever such a procedure might serve a useful purpose on the clear understanding that the "ultimate selection of all Additional Members" rested "with the Government, and not with the electors", who could recommend names, and such recommendations were "not likely to be disregarded except in cases of clearest necessity". Lansdowne further declared that the seats in the legislature could not be distributed according to strict numerical proportions nor upon a symmetrical and uniform system. Thus he expected the members to represent types and classes rather than areas and numbers.<sup>20</sup>

This principle of distribution of seats on the class basis was to have a far-reaching effect, for the communal electorate was an elaboration of this method. However, Lord Morley<sup>21</sup> was correct when in the course of his speech during the second reading of the Indian Councils Bill in 1908 he declared: "The Bill of 1892 admittedly contained the elective principle, and now this bill extends that principle."

19. P. Mukherjee, *op. cit.* p. xxxiv.

20. *Proceedings of the Legislative Council of the Governor-General of India*, xxxii, (1893), p. 111. Philips *op. cit.* pp. 68-9.

21. John Morley (1838-1923) (created Viscount, 1908) was more successful as a man of letters than a statesman. He was Chief Secretary for Ireland in 1892-95 and 1896 and Secretary of State for India during 1905-10. He and Gilbert John Murray Kynymond Elliott, fourth Earl of Minto (1845-1914), Viceroy of India (1905-10), were responsible for the *Indian Councils Act of 1909*.

The next constitutional reform was the Indian Councils Act, popularly known as the Morley-Minto Act, which was passed on May 25, 1909.

The main features of this Act were enlarging the size of the Legislative Councils and introducing openly the elective principle along with a communal electorate, which ultimately led to Pakistan.

The number of members of the Governor-General's Council was increased to a maximum of sixty with an official majority. In the Provincial Legislative Councils (with varying number of members) there were non-official majorities consisting of nominated and elected members, but the Government could have had a working majority in a Provincial Legislative Council with the help of the officials and nominated non-officials. The actual numbers of members to be nominated and elected (within the maximum laid down), the numbers required to form a quorum, their term of office, the conditions under which and the manner in which members should be nominated and elected, and the qualifications for membership were left to be determined by the regulations to be made by the Governor-General in Council subject to the approval of the Secretary of State in Council. Under this delegated authority the Governor-General in Council laid down elaborate and extremely complicated electorate rules, which actually introduced a communal electorate.

The Act of 1909 made but little alteration in the legislative function and powers of the Council and, as Prof. Coupland has observed, the Legislative Councils were still regarded as *durbars* rather than as parliaments; and in 1909 no less than in 1892 both the authors of the measures of advance and their critics, Liberals as well as Conservatives, declared categorically that India was not qualified for a parliamentary system.<sup>22</sup> However, the principle was admitted that the administration of government should receive the general support of the legislature.

The Act of 1909, was the culminating point towards 'representative government'. It had begun with the basic Anglo-Saxon conception that a body which enforces law, that is the executive part of the government, should not have the law-making power. This strongly-held view was fortified by the growing conviction that Indians must be associated with the law-making process, for they alone knew which law was most suitable for them, and so long as it did not affect British interests, Indians should have the law-making power. As Sir Charles Wood, Secretary of State,

22. Coupland, *op. cit.*, p. 25.



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wrote to the Viceroy, Lord Canning, on 7 November, 1859: "I put the President of the United States with his Cabinet as the model."<sup>23</sup> Wood was referring to the relation between the Governor-General and his Council, but if the analogy is stretched a little, it may be said that the Act of 1909 envisaged a Presidential type of government in which the President could be assured of perpetual majority in the Legislative Council and in case of necessity ignore the Legislative Council altogether. That is, the Governor-General and the Governors were as much independent of their Legislative Councils as they were of their Executive Councils. One of the reasons for this arrangement was that the Government of India was responsible to the Parliament through the Secretary of State, but this constitutional device had long outlived its usefulness, and it was evident that the Indians neither possessed the safeguards of the American Constitution nor the protection offered by a parliamentary type of government. The British civil service, which Mr. Lloyd George was to describe later as "the steel frame" of the Government of India, formed the executive government free from all ministerial control. The next two Acts, namely, the Government of India Act 1919 and the Government of India Act 1935, were attempts at transferring the executive government from the civil servants to responsible ministers.

## 8

Thus the Government of India Act of 1919, popularly known as Montagu-Chelmsford or Montford Reforms, had profound significance for our constitutional development. The Government still remained responsible not to the legislature but to the Parliament through the Secretary of State. But the first step towards gradual transfer of control from Parliament to elected Indian legislatures was effected by a division of the sphere of Government in the provinces between two authorities, one the Executive Council amenable to Parliament and the other the Council of Ministers amenable to the Indian legislature. The principal subjects transferred to the Ministers were Local Self-Government, Education (with certain exceptions), Public Works, Medical and Sanitary Administration, Industries and Excise; all the rest were reserved subjects. This system was popularly known as 'dyarchy.'

Another fundamental change brought about by the Montagu-Chelmsford Act was the formal division of the functions of the Central and the Provincial governments. This was envisaged by Lord Hardinge, the Viceroy (1910-16), who had stated in the Despatch of 1911:

23. Wood Papers, Commonwealth Relations (Formerly India Office) Library, Vol. I, pp. 218-22.



The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all and possessing power to interfere in cases of misgovernment, but ordinarily restricting their function to matters of Imperial concern.<sup>24</sup>

This dictum, namely that the Central Government being ultimately responsible for the good government of India must have power to enforce its authority in the case of breakdown of provincial government,<sup>25</sup> was not only enshrined in the Montagu-Chelmsford Act and the Government of India Act 1935, but has also been incorporated in our Constitution under the Emergency Provisions. However, it was clearly recognized that a unitary form of government was unsuitable to India, and, under normal circumstances, the Provinces should enjoy autonomy; that is, a kind of federation was envisaged. Indeed, Lord Curzon had characterized Lord Hardinge's despatch of 1911 quoted above as a federation of self-governing and quasi-independent States.<sup>26</sup> This, however, was unavoidable and Montagu and Chelmsford were forced to recommend this course because they felt that some power had to be transferred to Indian hands, and that could only be done safely in the provincial sphere. They stated in their report that in view of the declaration of August 20,<sup>27</sup> the future

24. *Government of India to the Secretary of State, 25 August, 1911.* Cmd. 5979, pp. 6-7.

25. The reason given was this : "Meanwhile it must be recognized that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India and perhaps irreparable. In these circumstances, the successful working of parliamentary government in the Provinces must depend, in a special degree, on the extent to which Parliament can translate the customs of the British Constitution into statutory 'safeguards'." *Joint Committee on Indian Constitutional Reform*, para 20, pp. 11-12.

26. Criticizing Lord Hardinge's despatch quoted above, Lord Curzon stated in the House of Lords on 21st February, 1912 : "My Lords, this picture of a federation of self-governing and quasi-independent States in India...may be a good or a bad idea. In my view it is a bad one, but nobody can doubt that it represents a scheme or a sketch of the future Government of India wholly different from that which has hitherto prevailed". *Parliamentary Debates, House of Lords*, Vol. II, cols. 164-65.

George Nathaniel, first Marquis Curzon of Kedleston (1859-1925) was Under-Secretary of State for India from 1891 to 1892 and Viceroy of India from 1898 to 1905. After his retirement he held many high offices including that of Foreign Secretary from 1919 to 1924.

Lord Crew, Secretary of State for India (November 1910 to May 1915), in reply, stated that the Government had no intention of instituting a federal system of Government of India. As it turned out, Lord Curzon was right and Lord Crew wrong.

27. This refers to the Secretary of State's announcement, 20th August, 1917, which was as follows :

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire..."

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set up of the Government of India could only be an association of self-governing States, for which "the English language has no word but 'federal'." They realized that in the absence of a pact between the federating units true federation was not possible, nor could there be any pact since the units as then constituted were agents of the Central Government, to whom powers had to be delegated because no single administration could support the Atlantean load.<sup>28</sup> But however reluctant Montagu and Chelmsford may have been to introduce a federal structure, their recommendations paved the way for the introduction of that system.

As for their own proposals for reform, Montagu and Chelmsford clearly realized their modest limits. Their intention was to train the electorates in matters which they best understood; therefore, they proposed great extension of local self-government along with what they termed "a substantial measure of self-government in the provinces" and better representation and more criticism in the government of India. It was a transitional arrangement and Montagu and Chelmsford anticipated the criticisms that were to be levelled against their reforms, namely, "hybrid executives, limited responsibility, assemblies partly elected and partly nominated, divisions of functions, reservations general or particular." But they urged that it should be clearly recognised that their proposed reforms were of a transitional character, which alone was their justification and purpose.<sup>29</sup>

Montagu had another purpose, which he had noted in his diary when he found that this Reforms Scheme was criticized by Indians as one which asks the Indians to be treated as schoolboys, getting a little more each time their schoolmasters say they may have it. Of course that is not my meaning. I do not doubt their ability to work representative institutions. Other countries have done it, and I think Indians can; but until they have learnt the customs, conventions, traditions and uses which are inseparable from representative institutions, and which cannot be embodied in any Act of Parliament, the transfer of powers of law and order to them will lead to anarchy, revolution, bloodshed and starvation, which has resulted in Russia. It is this use of power which they must be taught, which they must learn by experience and which we cannot risk.<sup>30</sup>

Unfortunate political developments, however, prevented the Montagu-Chelmsford Reforms from having a fair trial. The Government, that is the bureaucracy, never showed any enthusiasm for working the new Constitution, while the Congress first boycotted the legislature and then the Swaraj party entered to wreck the constitution from within.

28. *Report on Indian Constitutional Reforms*, para 120, p. 78.

29. *Ibid.*, paras 353, 354; p. 222.

30. S. D. Waley; *Edwin Montagu: A Memoir and an Account of his Visits to India*, Bombay, 1964, pp. 146-147.

The bureaucratic obduracy was a passing phase, but today it seems that owing to the tactics adopted by the Swaraj Party, parliamentary traditions and conventions could not develop.

Not quite, for the tradition did develop, that the business of the opposition was to obstruct the Government by every possible means, and that parliamentary tactics should be, in the main, measures to support the broader activities of the political party outside, at this time the non-co-operation movement and its offshoots. This was woven into the texture of our parliamentary tradition, so much so, that even after freedom the Opposition is more concerned with wrecking the parliamentary government than providing a healthy balance; while the party in power feels that its duty is to rubber stamp the decisions taken at the party headquarters making it impossible for the legislatures to function as forums where political adjustments can be made.

One of the basic conventions of parliamentary government in England is that a leader of a parliamentary party, if commissioned by the King to form a government, must make the most sincere efforts to do so. As the Swaraj Party refused to follow this convention, the dyarchy failed, though other contributory factors also accounted for its failure.<sup>31</sup>

## 9

The Montagu-Chelmsford Report had recommended that, ten years after the first meeting of the new councils established under the Statute, a Parliamentary Commission should be appointed to review the position.<sup>32</sup> This was also provided for in the Act of 1919 (Section 41), but it became obvious within a few years that the Act of 1919 was unworkable and would have to be changed. The Congress and the Swaraj Party were yet undecided as to the precise manner in which this change was to be brought about, and they went on opposing the Government as before. In the meantime Mrs Annie Besant had been active and had held several conferences to draft a Commonwealth of India Bill, which at one stage (January 1925) received Gandhiji's blessing. But in the prevailing political conditions in India, Mrs. Besant's Commonwealth of India Bill found little support. However, she went to England and influenced George Lansbury, the leader of the Labour Party, to introduce her Bill as a private member's measure without the backing of the Labour Party. It was accepted by the House and went through one reading. Then as Mrs. Besant's biographer puts it, "finding no one else to push it, it went onto

31. See Surendranath Bannerji, *Nation in Making*, Reprint 1963; pp. 352-54.

32. *Report on Indian Constitutional Reforms*, para. 261, p. 168.

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the Parliamentary back-shelf, from which it was never withdrawn.”<sup>33</sup> But though the purpose of the Bill was not fulfilled, Mrs. Besant's labour did not go in vain, for the recommendations of the Nehru Report were practically taken from Mrs. Besant's Commonwealth of India Bill. However, this Bill seems to have produced no effect in England, and a Parliamentary Commission was appointed in 1927 a year before it was due, under the Chairmanship of Sir John Simon, wherefore it came to be known as the Simon Commission.<sup>34</sup>

The fact that the Simon Commission was exclusively composed of British members was widely resented in India, and the Congress, the National Liberal Federation and a section of the Muslim League led by Mr. Jinnah<sup>35</sup> decided to boycott it. The Madras session of the Congress (1927) authorized its Working Committee to convene an All-Parties Conference with a view to drawing up a constitution acceptable to all parties. But as this Conference, which met at Bombay in May 1928, could not arrive at an agreement with Mr. Jinnah on the question of communal representation, the Conference decided to appoint a committee under the Chairmanship of Pandit Motilal Nehru to determine the principles of a constitution for India. This Committee's admirable Report<sup>36</sup> was published in August 1928, but for political reasons was not adopted at the All-Parties' Conference which met at Calcutta in the following December. Still the Nehru Report is of great interest as the sections dealing with Fundamental Rights, Judiciary etc. will show.<sup>37</sup>

The Nehru Report was not intended to be a full-fledged constitution; still it anticipated many features of our Constitution. The most signifi-

33. A. H. Nethercot ; *The Last Four Lives of Annie Besant* (Chicago, 1963) p. 360.

34. The Commission was composed of : Sir John Simon (Chairman), Lord Burnham, Lord Strathcona and Mount Royal, Hon. E. Cadogan, V. Hartshorn (in place of S. Walsh), Col. Lane-Fox and C. R. Attlee. The announcement was made by Mr. Stanley Baldwin, Prime Minister, on 8th November, 1927.

35. Mohammad Ali Jinnah (1876-1948), born and educated at Karachi and England, practised as a lawyer at the Bombay High Court. Early in his career he joined the nationalist movement and took a leading part in bringing about the Lucknow Pact of 1916, the year in which he was elected President of the Muslim League. Almost at the same time he joined the Home Rule League of Mrs. Besant. He left the Congress in 1921, and gradually became increasingly communal till he achieved the partition of India in 1947. He became the first Governor-General of Pakistan.

36. Motilal Nehru (1861-1931), father of Jawaharlal Nehru, practised as a lawyer at the Allahabad High Court, was President of the Indian National Congress in 1919 and 1928. The report prepared by the Committee of which he was the Chairman was popularly known as the Nehru report, but was named *All Parties Conference, 1928: Report of the Committee appointed by the Conference to determine the principles of the Constitution for India*, Alahabad, 1928. The Committee was appointed by the All-Parties Conference at Bombay on May 19, 1928, and consisted of the following members : Pandit Motilal Nehru (Chairman), Sir Tej Bahadur Sapru, Sir Ali Imam, G. R. Pradhan, Shuaib Quereshi, Subhas Chandra Bose, M. S. Aney, M. R. Jayakar, N. M. Joshi and Sardar Mangal Singh. Pandit Jawaharlal Nehru was in constant attendance at the meetings of the Committee and “rendered most valuable assistance at every stage of the Committee's work”. (*Ibid.*, p. 26).

37. *Ibid.*, Chapter VII, “The Recommendations”, pp. 100-124. For extracts from the Nehru Report see *Pilgrimage to Freedom*, Appendix.

cant recommendation of the Nehru Report was its acceptance of Dominion Status for India, and several of its important features were adopted from the Dominion Constitutions, of which the most important was the position of the head of the executive. Our present Constitution, however, declares India to be a Sovereign Democratic Republic; therefore the sections of the Nehru Report dealing with the powers and functions of the King, Governor-General and the Governor could not find a place in our Constitution, though the constitution-makers believed and tried to evolve a President on the pattern of the British King or the Dominion Governor-General. That was impossible, and the result has been the creation of a certain amount of confusion and the danger of the possibility of a conflict between the President and the Prime Minister on which Dr. Munshi has dwelt at length in the chapter on President.

In this connection it may be recalled that when India decided to remain in the Commonwealth, King George VI suggested to his Prime Minister Mr. Attlee that he (the King) might assume the title of 'President of India' and the same suggestion was made by Sir Winston Churchill.<sup>38</sup> We do not know whether this suggestion was conveyed to the Government of India, though the probability is that it was. It was, however, never discussed in the Constituent Assembly; but if the suggestion has been accepted we would have had today a chief executive modelled exactly like those of Canada or Australia.

10

The Nehru Report was ignored by the Simon Commission because it demanded Dominion Status, and for the same reason it failed to gain support amongst Indian nationalists. But whatever complaints the Indians may have had about the lack of British sympathy for their natural aspiration, there could be no doubt about the serious assiduity with which the British tried to grapple the constitutional problem of India within the framework of Parliamentary supremacy from 1927, when the Simon Commission was announced, to 1937, when the provincial ministries were set up under the Government of India Act 1935. The Simon Commission toured India in 1928 and 1929 and its report was published in May 1930.<sup>39</sup> Thereafter, three sessions of the Round Table

38. "...Mr. Churchill made the same suggestion which Your Majesty made yesterday, as to the possibility of Your Majesty being the President of India..." (Letter from Mr. Attlee to King George VI, dated 2nd March, 1949, quoted by F. Williams : *A Prime Minister Remembers*, London, 1961, p. 218.

39. *Indian Statutory Commission Report*, Volume I, *Survey*, Cmd. 3568, 1930; Volume II, *Recommendations*, Cmd. 3569, 1930.

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Conference were held in London,<sup>40</sup> and in March 1933, the decisions taken by the British Government in the light of the Conferences were published in a White Paper,<sup>41</sup> and in April a joint committee of both Houses was appointed 'to consider the future government of India' with special reference to the White Paper proposals.<sup>41a</sup> After the publication of the Report a Bill was introduced on December 19, 1934. It was passed after a series of memorable debates in the House of Commons and on August 4, 1935, the Bill received the Royal assent, and came to be known as the Government of India Act 1935.<sup>42</sup>

It is not possible to describe even in brief outline the various reports published under the authorities mentioned above. The main provisions of the Government of India Act were as follows:

(1) Provincial autonomy was recognized by giving the Provinces a separate legal personality and liberating them from Central Control except for certain specific purposes. (2) 'A Federation of India' was established comprising both Provinces and States, with a federal Central Government and legislature for the management of Central subjects. (3) Dyarchy, abolished in the Provinces, was introduced at the Centre. (4) The subjects of foreign affairs and defence were 'reserved' to the control of the Governor-General; the other Central subjects were 'transferred' to Ministers, subject to similar 'safeguards' as in the Provinces. (5) The federal principle was recognised in the provision for the indirect or Provincial election to the lower house of the Central legislature, but in general the constitution accorded more with the closer than with the looser type of federation. (6) On the other controversial issues the Act maintained the policy of 1917. On the one hand it confirmed and extended parliamentary government in the Provinces and introduced it at the Centre; on the other hand it retained separate electorates, both Provincial and Central, distributing the seats on the lines of the 'Communal Award'.

The most important changes envisaged by the Government of India Act 1935 were the introduction of the federation and provincial autonomy. For reasons which need not be discussed here, the federation never came into operation. As for provincial autonomy, the Congress leaders were at first inclined to the belief that the Governors would en-

40. *Indian Round Table Conference, Proceedings (Plenary Session); Indian Round Table Conference, Proceedings of Sub-Committees. Indian Round Table Conference, Second Session, September 7, December 1, 1931. Proceedings of the Federal Structure Committee and Minorities Committee, 1932.*

41. *Proposals for Indian Constitutional Reform*, Cmd. 4268.

41 a. *Joint Committee on Indian Constitutional Reform Report.*

42. The Act came into force partly on July 3, 1936 when the electoral provisions began to operate, and the whole of it on April 1, 1937 except Part II which dealt with All-India Federation and Part VIII which dealt with the Federal Railway Authority.



joy overriding power over their ministers, and were therefore unwilling to accept ministries in provinces where they were in a majority. An authoritative pronouncement on the subject, however, was made by the British Prime Minister, Mr. Neville Chamberlain, on June 17, 1937 in reply to a question by Sir Winston Churchill.

It is not possible to reproduce the elaborate question and the exhaustive reply which cover five columns of the *Hansard*.<sup>43</sup> The main point which emerged from Mr. Chamberlain's reply was that with the introduction of provincial autonomy, the British Parliament's control over the provincial governments would come to an end, except in the rare circumstances in which a provincial Governor felt obliged to exercise his statutory powers in disregard of the advice of his Ministers. This was followed by an assurance given by Lord Linlithgow, the Viceroy, on June 22, 1937, in which he gave the assurance that the Governors would exercise their special powers with extreme circumspection.<sup>44</sup>

Mr. Chamberlain's answer, and Lord Linlithgow's statement are still relevant even in the context of our Constitution; indeed the statements with a few verbal changes, may be taken as a commentary on our Constitution as regards the relative positions of the Central Legislature and the State Legislatures, and the Governors and the State Ministries. The promises, however, were nullified, when, on the eve of the war, Parliament hurriedly passed the Government of India (Amendments) Act of 1939 by which the Central Government was empowered, not only to give directions to a province as to the manner in which its executive authority should be exercised, but to make laws conferring executive authority in respect of provincial subjects on the Central Government and its officials.<sup>45</sup> Thus within ten minutes, the House of Commons repudiated the pledge given by a British Prime Minister and a Viceroy, while both of them were still in office.<sup>46</sup> Possibly, according to English constitutional usage, this act may be called 'unconstitutional'; but the Provincial ministers, including the Congress did not react very sharply to it. Congress based its attitude mainly on war aims and India's future status. But, if the Congress ministers had resigned on this issue, they could have put the British Government in an indefensible position.

43. *Parliamentary Debates, House of Commons*, Fifth Series, Volume 325, Cols. 552-57.

44. Marquess of Linlithgow, *Speeches and Statements*, 1936-43; Bureau of Public Information, Government of India, New Delhi, 1945, pp. 80-1.

45. This amendment was not invoked during the Bengal Famine, in which about a million people died due to the ineptitude of the Muslim League Ministry in Bengal.

46. The second reading of this Bill (1 September 1939) took exactly ten minutes. There was practically no debate. *Parliamentary Debates, House of Commons*, 1938-39, Vol. 351, Cols. 151-54. It may be noted, however, that the Union Government enjoys similar power under our Constitution, under Articles 356 and 357.

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### 11

With the resignation of the Congress Ministries, the Act of 1935 practically ended its utility. The position was made clear when the British Government pledged in 1942<sup>47</sup> to set up a constituent assembly in India after the end of the war to determine India's constitution.

The Cabinet Mission conceded the popular demand, and according to its scheme of May 16, 1946, the Constituent Assembly of India was elected.<sup>48</sup> The Constituent Assembly met at Delhi on December 9, 1946, and India was declared independent on August 15, 1947, when power was transferred by the Parliament to the Constituent Assembly.<sup>49</sup> The Constitution passed by the Constituent Assembly came into effect on January 26, 1950. During this intervening period, India was governed by The India (Provisional Constitution) Order, 1947, made on the 14th August, 1947, by the Governor-General, Lord Mountbatten, in the exercise of powers conferred on him by sections 8(2) and 9(1) of the Indian Independence Act, 1947, making numerous omissions, adaptations and modifications in the Government of India Act 1935, with effect from August 15, 1947. The order was subsequently amended by the India Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947, and the India Provisional Constitution (Second Amendment) Order, 1947, all of which were given retrospective effect to the same date as the principal order.

### 12

The Nehru Report presented the aspirations of nationalist India, while the Government of India Act 1935 represented the achievement of the British. Our Constitution is, in the main, a blending of the aspiration and the achievement.

The Constitution of India has drawn so heavily upon the India Act of 1935, that it will not probably be an exaggeration to say that it is an

47. See below document No. 2.

48. See below document No. 9.

49. This was provided for in the *Indian Independence Act, 1947*, Article 8(1) : "In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly".

The *Government of India Act 1935* as amended by the *India (Provisional Constitution) Order 1947* provided as follows under Article 18 : "The powers of the Dominion Legislature under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly".



adaptation of the Act to suit the needs of a "Sovereign Democratic Republic". This was just as well, for it would have been impossible to improvise a Constitution which was as thorough, as well drafted, and as mindful of Indian conditions and her constitutional development, as the Act of 1935.

Foreign Constitutions were studied, and Sir B. N. Rau, who was the Constitutional Adviser to the Constituent Assembly, went on an extended tour of the U.S.A., Canada, Eire and the U.K. for personal discussions with leading constitutional authorities in those countries. He wrote a series of notes on the constitutional problems. These notes are valuable academic discussions of various constitutional problems, but it is difficult to say how far they influenced the actual drafting of the Constitution. It may be recalled that Dr. B. R. Ambedkar, the first Minister of Law of India, who piloted the Constitution through the Constituent Assembly, had attended all the sessions of the Round Table Conferences and also was a delegate to the Joint Select Committee. It is likely therefore that he was influenced by the Government of India Act, 1935, which, as we have said, provided the model for our Constitution.

This is not to say that there was no significant departure from the Act of 1935. There are indeed several features of the Constitution which are not based on the Act of 1935. The most important of these deals with Fundamental Rights. This was a notable departure from the principle on which the Government of India Act, 1935, was based, though Articles 298 and 299 of this Act guaranteed certain fundamental rights. However, the British constitutional tradition is not to define rights, and in this connection it may be noted that the Joint Select Committee had decided against the codification of such rights.<sup>50</sup>

It will therefore be seen that the inclusion of the Fundamental Rights has been in keeping with Indian demands. As the readers of Volume I of this series (*Pilgrimage to Freedom*) have seen, it was with regard to Fundamental Rights that Dr. Munshi made a notable contribution to our Constitution.

Dr. Munshi's insistence on the provision of Fundamental Rights formed one of the closely reasoned conclusions which he deduced from a basic premise, namely, the structure of politics in India. He was convinced that the Congress Party—which he knew quite well—would remain in power for a long period, may be up to fifty years; and its downfall might not be effected by another homogenous party, but by a coalition of parties. The result might be the emergence of a multi-party coalition

50. *Joint Committee on Indian Constitutional Reforms*, Report, Vol. I, Part I, para 368, pp. 215-16.

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government, like that in France before the coming into power of President De Gaulle, under the new constitution.

In order to sustain democracy from the misuse of unrestricted power by single party government with overwhelming majority in a country without developed democratic traditions, Dr. Munshi insisted on justiciable Fundamental Rights and an independent judiciary with wide powers. For he had realized that a mere enunciation of these rights and their incorporation in a constitution by themselves could not constitute a guarantee of individual liberty. "Unenforced fundamental rights are no guarantee of individual liberty at all", he wrote in one of his 'Notes', and set out reasons why, in spite of their elaborate enumeration in the Weimar Constitution, the people of Germany lost their liberties and why, on the contrary, the people of England were assured of their fundamental liberties when they never had either a written constitution or an enumerated list. The secret lies, he says, in the fact of these rights being strictly and impartially enforced by the judiciary; and this judiciary should be completely independent of both the executive and the legislature. This view was shared by all the members of the Constituent Assembly, so no difficulty was experienced to put it through. However, Dr. Munshi's third postulate, which he holds to be a corollary of the first two, met with opposition.

At Dr. Munshi's instance, rather insistence, the Advisory Committee on Fundamental Rights in their report had provided as follows: "No person shall be deprived of his life or liberty, without due process of law, nor shall any person be denied the equal treatment of laws within the territories."<sup>51</sup> During the debate on Article 15(a) of the Draft Constitution (April 30, 1947), Dr. Munshi moved that for the words "the equal treatment of the laws" the words "equality before the laws" be substituted,<sup>52</sup> and this was passed. The draft article was, however, changed by the Drafting Committee of which Dr. Munshi was a member, and after further modification became Article 21 of our Constitution. During the debate on the Draft Constitution, Pandit Thakur Das Bhargava moved an amendment to restore the article in its original form.<sup>53</sup> Supporting this amendment Dr. Munshi said that by the amendment the Court was empowered to examine not merely whether a person was convicted in accordance with law or proper procedure had been adopted, but also whether "the procedure as well as substantive part of the law are such as would be proper and justified by the circumstances of the case," and added that for the successful working of democracy "a balance must be

51. Section 9 of Interim Report on Fundamental Rights, presented by Sardar Patel Chairman, Advisory Committee on Minorities, Fundamental Rights, etc. to the Constituent Assembly, 29th April, 1947. *Constituent Assembly Debates*, III, p. 441.

52. *Constituent Assembly Debates*, III, p. 468.

53. *Ibid.*, 6th December, 1948, Vol. VII, p. 846.

struck between individual liberty on the one hand and social control on the other." The majority in a legislature, he added, were more anxious to establish social control than to preserve individual liberty, so that some scheme must be devised "to adjust the needs of individual liberty and the demands of social control." The proposed amendment, in his opinion, would strike that balance, for under it the Government would have to go to a court of law to justify the necessity of a particular measure infringing the personal liberty of the individual.<sup>54</sup>

Dr. Munshi has dwelt at length on this in the *Pilgrimage to Freedom*, so it is not necessary to go into the matter any further. It should be remembered, however, that he was opposed, mainly by lawyers, notably, Sir Alladi Krishnaswamy Ayyar and Dr. Ambedkar.

Sir Alladi pointed out that the expression 'due process' has been differently interpreted by British and American Judges. The British interpretation might not lead to any difficulty, but the American interpretation might, for it really meant, "what the Supreme Court says what it means in a particular Case." "I would challenge", said Sir Alladi, "any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of 'due process'." He then warned, on the basis of experience in the U.S.A., that this amendment might "serve as a great handicap for all social legislation for the ultimate relationship between employer and labour, for the protection of children, and for the protection of women."<sup>55</sup>

In a hesitant speech, which was unusual with him, Dr. Ambedkar explained the implications of the clause. He pointed out that without the clause, that is, according to Article 21, it would be open to the judiciary to declare an act *ultra vires* if a law passed by a legislature exceeds the power granted to it by the Constitution. The 'due process' clause, however would enable the judges to question the law not merely on the ground whether it was in excess of the authority of the legislature but also on the ground whether it was good law. And Dr. Ambedkar concluded: "There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of the individual. At the same time I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices can be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and

54. *Ibid.*, pp. 851-53.

55. *Ibid.*, pp. 853-54.

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I therefore would not say anything. I would leave it to the House to decide in anyway it likes.”<sup>56</sup> Dr. Ambedkar’s indecision settled the issue and the Constituent Assembly rejected Mr. Bhargava’s amendment.

As stated above, the other danger which Dr. Munshi apprehended was the emergence of an unstable multi-party coalition government and consequent weakening of central authority. Such a situation might pose far greater danger for India than for a small country like France, which moreover had a unitary form of government. The remedy, which Dr. Munshi suggested, was vesting the President with adequate powers, particularly during an emergency. He has dealt with this topic elaborately in the *Pilgrimage to Freedom*. We would only point out here that Dr. Munshi did not want to create a bicephalic head of the Government; his intention was to provide the President with sufficient authority to weather a crisis and not power to interfere in the normal working of the Government. The future will show how far our Constitution anticipates the developing needs and can adjust itself to the ‘felt necessities’ of the time.

## 13

The Constituent Assembly was a sovereign body, and took the ultimate decisions formally; but more often than not, it felt itself capable only of expressing inclinations, not of resolving problems; fit to suggest a policy not to adopt one. Therefore, though the debates of the Constituent Assembly and the Committee Reports etc. are very instructive as well as informative, it should be remembered that many of the vital decisions were taken informally either by Pandit Nehru or by Sardar Patel. For obvious reasons no record was kept of those informal meetings, and it is now impossible to recount them.

Fortunately, however, we have been able to find documentary evidence in one case where such decision was taken outside the Constituent Assembly, indeed before it met. From document No. 32 given below it will be seen that Dr. Munshi proposed the Rules of Procedure of the Constituent Assembly which were accepted. This has a history behind it. After the Congress had accepted the May 16 proposal of the Cabinet Mission, the leaders were apprehensive lest the Muslim League should impose a constitution for the Groups, which would be detrimental to national interest. To obviate this Dr. Munshi submitted to Gandhiji a set of Rules of Procedure for the Constituent Assembly which would place the Groups within the purview of the Constituent Assembly. This was approved by

56. *Ibid.*, pp. 999-1001.

Gandhiji who wrote to Pandit Nehru in very guarded language. A copy of this letter is in Dr. Munshi's file and has been reproduced in the Appendix to his *Pilgrimage to Freedom*.<sup>57</sup> The same day Gandhiji wrote to Sardar Patel, "Munshi will tell you about other details."<sup>58</sup> He discussed the Rules with Pandit Nehru and Sardar Patel, and when the time came Pandit Nehru asked Dr. Munshi to submit his Rules for adoption by the Constituent Assembly.

Dr. Munshi had been working in intimate association with Sardar Patel long before there was any talk of a Constituent Assembly; therefore, he not only enjoyed Sardar Patel's confidence but was also able to influence that formidable man, least open to ideological convictions. To this fortunate circumstance may be ascribed the smooth passage of the Fundamental Rights and the other measures we have noted above.

57. K. M. Munshi, *Pilgrimage to Freedom*, Appendix No. 87.

58. M. K. Gandhi : *Letters to Sardar Vallabhbhai Patel*. English translation by V. G. Desai and S. V. Desai, (Ahmedabad, 1957) ; Letter No. CCXLVII, p. 185.

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## PART ONE

### 1

#### OUR OBJECTIVE: A CONSTITUENT ASSEMBLY

K. M. MUNSHI

##### (a) *Historic Origins*

The Working Committee of the Congress has placed Constituent Assembly in the forefront of its parliamentary objectives.

The historic origin of the Constituent Assembly is to be found in those great movements which drove some of the people of Europe to organise themselves into nations in order to destroy arbitrary power. Popular resistance to Kings yielded the great idea that the fundamental laws of a country can only be determined by its own people. To this idea, we owe many of the revolutions and wars of the last two centuries and a half. To it, we owe the principle of self-determination, the doctrine of parliamentary democracy, and the conceptions of constituent assembly and written constitutions.

As early as 1649 the Puritans of England solemnly banded themselves to resist the divine right of kings and to base a constitution on the consent of the people. "We are fully agreed and resolved," they stated, "God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the ends for which they are intended." The great Protector said: "In every Government there must be somewhat fundamental, somewhat like a Magna Charta, that should be standing and be unalterable." Four years later Oliver Cromwell and his officers formed themselves into a Constituent Assembly and organized the protectorate by a document known as the Instrument of the Government.

In the seventeenth century men's minds were agitated over discovering the sources of popular authority. They found in the *loi fondamentale* the only solution for political misrule. Montesquieu, the father of modern political thought, in his *l'Esprit des Lois* (1748) discussed how power in a nation flowed through these fundamental laws. Rousseau called only these laws fundamental "which govern the relation of the whole to the whole or of the sovereign to the State." These laws were to be framed by the people in an assembly

called for the purpose. A few years later America evolved the appropriate machinery. In 1776 the Congress of Philadelphia, while organizing resistance to British Power, called upon the assemblies and the conventions of the colonies "to adopt such Government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular and America in general." Here we have a Constituent Assembly setting out to work towards popular self-determination. The same year the Convention of Virginia framed its constitution with a Declaration of Rights which became a model for the rest of the world. The American war followed and the Convention of Philadelphia of 1787, the greatest Constituent Assembly ever set up, drew up the constitution of the United States, which has flourished now for well-nigh a century and a half. Thenceforward Constituent Assembly became the one indispensable instrument of political self-determination.

The first act of revolutionary France in 1789 was to set up a Constituent Assembly which promptly proclaimed that "all sovereignty resides essentially in the nation. No body nor individual can exercise authority except such as emanates directly from the people." "To create the constitution," said Thouret, "is to regenerate the State." The State was nothing but the nation itself regarded as a political association.

Rousseau's conception that sovereignty rests with the whole body of citizens and expresses itself as the general will of the people became the root idea of modern political thought. And it assumed practical shape in the doctrine that the ultimate authority of the sovereign people should be maintained by a provision in every constitution, that changes in the fundamental or constitutional laws could only be made by a special representative body chosen for the purpose. A nation's right thus to organize itself is called the constituent power, and is exercisable only in a Constituent Assembly convened for the purpose. "This constituent power," says Raymond Poincare, "is the beginning and the end and the very essence of sovereignty. A people which cannot organize itself is a people enslaved."

## (b) *The British Commonwealth*

The idea of a Constituent Assembly has dominated the political thought of the modern world since 1787. For instance every step towards freedom in the British Empire was marked by a people deliberately expressing its will through some kind of Constituent Assembly.

## OUR OBJECTIVE: A CONSTITUENT ASSEMBLY

The Quebec Conference which met on the 10th of October 1864 formulated a scheme, which, with a few variations, was accepted by the British Parliament as the British North America Act. The delegates from this Conference met the law officers of the Crown and the Secretary of State in London in 1867 and drew up the British North America Act on the basis of the resolutions passed by the Quebec Conference.

In Australia a similar process was followed. The National Australian Convention, consisting of forty-five delegates from the Colonies, met in Sydney in March 1891 to frame a constitution. The scheme which this Convention formulated gave a concrete shape to the political needs of Australia. In 1897 yet another Convention was held to frame a constitution for Australia. It was a deliberately convened Constituent Assembly brought into existence to exercise the principle of self-determination. Mr. Deakin expressed its predominant spirit in his speech. "Is it possible", he said, "when the Australian people for the first time have emerged as an Australian people represented in an Australian Assembly to draft an Australian Constitution, that its great promise should disappear unfulfilled?... The Constitution we seek to prepare is worthy of any and every proposed sacrifice, for it is no ordinary measure, and must exercise no shortlived influence, since it preludes the advent of a nation... We are the trustees for posterity, for the unborn millions, unknown and unnumbered, whose aspirations we may help them to fulfil and whose destinies we may attempt to determine." The Convention framed a Bill; a deputation of Australian Ministers brought it to England and Mr. Chamberlain, the Secretary of State for the colonies, accepted it. The attitude of the Australian Ministers in London was clear. The Bill represented the verdict of the Australian people on their constitutional problems and the British had to make the best of it. And with minor changes it was passed by the British Parliament as the Commonwealth Act of 1900.

In 1908 the four Colonial Parliaments in South Africa also held a convention at Durban, which in 1909 drafted a Bill for the constitution of the Union of South Africa. The Bill was accepted. The Convention at Bloemfontein considered the amendments submitted by the Colonial Parliaments and the Bill became law as The South Africa Law of 1909.

Thus every grant of Dominion Home Rule within the British Empire has been more in the nature of a treaty than a statute. In every case the treaty has been the result of a struggle, constitutional or otherwise. In each case a Constituent Assembly formulated proposals: in each case, in substance, the constitution was based on a

treaty between the British Parliament and the Constituent Assembly of the Dominion concerned. This becomes explicit when we see the origin of the Irish Free State. Its constitution was obtained by a treaty signed by Great Britain and Southern Ireland and ratified by the British Parliament and an Irish Constituent Assembly. The preamble to the constitution of the Irish Free State states: "If any provision of the said Constitution or any amendment thereof or law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative."

(c) *Post-War Europe*

The Constituent Assembly became the most potent political factor in post-war Europe. The War was won by Wilson who stood forth as a champion of self-determination for down-trodden nations, and a Constituent Assembly became at once the organ of self-determination and a symbol of political enfranchisement. The Allies invited many nations of Europe, old and new, to convene Constituent Assemblies to determine their mode of government. During the fateful year 1918, when the Kaiser abdicated, the Germans, crushed by the victorious powers and torn by internal dissensions, called a Constituent Assembly to draw up the Constitution of 1919.

The Constituent Assembly of Czechoslovakia framed its constitution, the preamble of which runs as follows: "We, the Czechoslovak nation, desirous to consolidate the perfect unity of our people, to establish the reign of justice in the Republic, to ensure the peaceful development of our native Czechoslovak land . . . have adopted the following constitution for the Czechoslovak Republic." Many newly created political units followed suit. The preamble to the Estonian constitution runs: "The Estonian people with unshaken faith and resolute will to create a State based on justice, law, and liberty for the defence of external and internal peace, and as a pledge for the social progress and general welfare, liberties and progress of future generations, has drawn up and accepted through the Constituent Assembly the Constitution as follows: . . . . ."

The study of different Constituent Assemblies reveals two different methods of forming them. In countries where Anglo-Saxon influences predominate, the assembly is formed of members who are themselves elected by the existing provincial bodies which may or may not be elected by a restricted franchise. The other method assumes that the Assembly reflects, as accurately as possible, the views of the nation. This is achieved by adopting adult suffrage

## DECLARATION OF THE BRITISH GOVERNMENT

and proportional representation, which is more or less a scientific form of providing separate electorates. This method has been largely followed in Europe, and, looking to Indian conditions, is the only one which will suit India.

Thus the Constituent Assembly has come to play an important part in modern political life. The Congress stands for such an assembly, for it alone can be the symbol of India's freedom and the source of her people's strength. Through it, India hopes to attain the dignity of an enfranchised nation, fashion its will to self-determination, and find its own soul to express it through fundamental laws. *Whether this consummation can be reached through the Parliamentary effort remains to be seen. Its success will largely depend upon the verdict of the voters.*<sup>1</sup>

(The Congressmen will fight the forthcoming elections to the Legislative Assembly on the issue of Constituent Assembly. They will have nothing to do with Simon Commissions pretending to sit in judgment over our ability to govern ourselves. They will have no more to do with Round Table where nominees of Government speak the language of patriots and follow in the footsteps of flunkies. They will aim at educating public opinion on the question of the Constituent Assembly. And in the Assembly they will solely work to create a situation whereby an Indian Constituent Assembly would become an accomplished fact. The path to such a goal does not necessarily lie through bloodshed. It often lies through a determined bloodless conflict leading to a treaty between two nations which have learnt to respect each other.<sup>2</sup>)

## 2

### DECLARATION OF THE BRITISH GOVERNMENT, DATED MARCH 11, 1942<sup>3</sup>

His Majesty's Government, having considered the anxieties expressed in this country and in India as to the fulfilment of promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall

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1. The sentences in italics are in Gandhiji's handwriting, who had substituted them for the following paragraph which he had crossed through.
  2. This article was published in the *Hindustan Times* of 21-7-34. We have included it here, because it is evident from Gandhiji's correction that he agreed with the views expressed in this article except the last paragraph which he deleted.
  3. Cmd. 6350, pp. 4-5.



be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any aspect of its domestic and external affairs.

His Majesty's Government therefore make the following declaration:

(a) Immediately upon cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new constitution for India.

(b) Provision shall be made, as set out below, for participation of Indian States in the constitution-making body.

(c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to:

(i) The right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

(ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with undertakings given by His Majesty's Government, for the protection of racial and religious minorities, but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the constitution, it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

(d) The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal

## BROADCAST OF SIR STAFFORD CRIPPS

communities agree upon some other form before the end of hostilities:—

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of Provincial Legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number about 1/10th of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

(e) During the critical period which now faces India and until the new constitution can be framed, His Majesty's Government must inevitably bear the responsibility for and retain the control and direction of the defence of India as part of their world war effort but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus, they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India.

### 3

## BROADCAST OF SIR STAFFORD CRIPPS, DELHI, DATED MARCH 30, 1942<sup>1</sup>

First of all you will want to know what object we had in view. Well, we wanted to make it quite clear and beyond any possibility of doubt or question that the British Government and the British people desire the Indian peoples to have full self-government, with a constitution as free in every respect as our own in Great Britain or as of any of the great Dominion members of the British Commonwealth of Nations. In the words of the Draft Declaration, India would be 'associated with the United Kingdom and

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1. *The Indian Annual Register*, 1942, pp. 221-24.

other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any aspect of its domestic or external affairs.'

There is, however, an existing constitution which regulates the Central and Provincial Governments of India and everyone agrees that in these troublous times we cannot here and now set about forging a new constitution. It is far too important a matter for the future of India to be improvised in a hurried way.

The principle on which these proposals are based is that the new constitution should be framed by the elected representatives of the Indian people themselves. So we propose that immediately hostilities are ended, a constitution-making body should be set up consisting of elected representatives from British India, and if the Indian States wish, as we hope they will, to become part of the new Indian Union, they too will be invited to send their representatives to this constitution-making body, though, if they do, that will not, of itself, bind them to become members of the Union. That is the broad outline of the future.

Now what is to happen in the meantime?

The British people are determined to do their utmost for the defence of India and we are confident that, in that great task, the Indian peoples of all races and religions are eager to play their full part.

So much for the general framework of the proposals. But, as we all know, the most vital and difficult question is that which concerns the interests of the various communities amongst the Indian peoples.

I will not attempt to go into any of the historical origins of these difficulties; let us instead look at them as a present fact. In the great subcontinent of India there is more than one people; there are many peoples and races as there are in the great sub-continent of Russia. Our object is to give to the Indian peoples full self-government with complete freedom as to how they will devise and organize their own constitution.

There are those who claim that India should form a single united country; there are others who say it should be divided up into two, three or more separate countries; there are those who claim that provincial autonomy should be very wide with but few centrally controlled federal services; others stress the need for centralization in view of the growing complexity of economic development.

These and many other and various ideas are worthy to be explored and debated, but it is for the Indian peoples, and not for

## BROADCAST OF SIR STAFFORD CRIPPS

any outside authority, to decide under which of these forms India will in the future govern herself.

If the Indian peoples ask our help, it will, of course, be gladly given, but it is for you, the Indian peoples, to discuss and decide upon your future constitution. We shall look on with deep interest and hope that your wisdom will guide you truly in this great adventure.

We ask you, therefore, to come together—all religions and races—in a constitution-making body as soon as hostilities are over to frame your own constitution.

We have specified the form which that body will take, unless, and this is an important point, the leaders of the principal sections of Indian opinion agree between themselves before the end of hostilities upon some other and better form.

The constitution-making body will have as its object the framing of a single constitution for the whole of India—that is, of British India, together with such of the Indian States as may decide to join in.

But we realize this very simple fact: If you want to persuade a number of people who are inclined to be antagonistic to enter the same room, it is unwise to tell them that once they go in there is no way out—they are to be for ever locked in together.

It is much wiser to tell them they can go in and if they find that they can't come to a common decision, then there is nothing to prevent those who wish from leaving again by another door. They are much more likely all to go in if they have knowledge that they can by their free will go out again if they cannot agree.

Well, that is what we say to the provinces of India. Come together to frame a common constitution; if you find after all your discussion and all the give-and-take of a constitution-making assembly that you cannot overcome your differences and that some provinces are still not satisfied with the constitution, then such provinces can go out and remain out if they wish and just the same degree of self-government and freedom will be available for them as for the Union itself, that is to say complete self-government.

We hope and expect to see an Indian Union strong and united because it is founded upon the free consent of all its peoples, but it is not for us, Britishers, to dictate to you, the Indian peoples. You will work out and decide that problem for yourselves.

So we provide the means and the road by which you can attain that form of the absolute and united self-government that you desire at the earliest possible moment. In the past we have waited for

the different Indian communities to come to a common decision as to how a new constitution for a self-governing India should be framed and, because there has been no agreement amongst the Indian leaders, the British Government has been accused by some of using this fact to delay the granting of freedom to India. We are now giving the lead that has been asked for and it is in the hands of Indians and Indians only whether they will accept that lead and so attain their own freedom. If they fail to accept this opportunity the responsibility for the failure must rest with them.

We ask you to accept this fulfilment of our pledges in the past and it is that request that I have put before your leaders in the document which you have seen.

As regards the position of minority communities within the new Indian Union, I am confident that the constitution-making body will make just provision for their protection. But in view of the undertakings given to these minorities by His Majesty's Government in the past we propose that in the Treaty, which, under the Draft Declaration, will be concluded between His Majesty's Government and the constitution-making body, the new Indian Union should undertake to protect the rights of these minorities. If there should be any non-acceding provinces a similar treaty provision would be made in respect of minority communities within their borders.

I have already indicated to you the position as to the immediate future.

I know that His Excellency the Viceroy has the greatest hope that the acceptance in principle of this document by the leaders of Indian opinion will make it possible for him to start forthwith upon the consultations which will enable him to implement the principle laid down in the last paragraph of the document.

It contains one essential reservation—that in respect of the responsibility for Defence. This reservation does not mean that the Governor-General and his Executive Council will or indeed could be excluded from taking an effective share in the counsels for the defence of India. In this wide-flung war, defence cannot be localized in a single country and its preparation must permeate the activities of every department of Government and must demand from every department the fullest co-operation. If His Majesty's Government are to take full responsibility for the conduct of naval, military and air defence of India, as it is their duty to do, then the defence of India must be dealt with by them as part of the world war effort in which they are now engaged, and the direction of that defence must rest in the hands of the Commander-in-Chief under the War Cabinet and their highest staff officers. But, as I

STATEMENT BY MR. L. S. AMERY

have already pointed out, the Government of India must also have an effective share in the Defence counsels and so we have decided that the Commander-in-Chief must retain his position as a Member of the Executive Council.

In order, however, that India may have full voice in this central control of strategy, defensive and offensive, not only in India itself but in all the interrelated theatres of war, we have invited the appointment of a representative Indian to the War Cabinet and to the Pacific Council of the United Nations—that is one of the ways in which India will have her full say in the counsels of the Commonwealth and of the United Nations as an equal partner. And when it comes to the making of the peace, India will appoint her own representatives to the Peace Conference side by side with those of the other free nations and so make her contribution to the building of a new world order.

I am confident that nothing further or more complete could be done towards the immediate realization of the just claims and demands of the Indian peoples. Our proposals are definite and precise. If they were to be rejected by the leaders of Indian opinion, there would be neither the time nor the opportunity to reconsider this matter till after the war and it would be a bitter blow to the friends of India all over the world.

4

STATEMENT BY MR. L. S. AMERY, SECRETARY OF STATE FOR INDIA, IN THE HOUSE OF COMMONS ON JUNE 14, 1945

1. During the recent visit of Field-Marshal Viscount Wavell to this country, His Majesty's Government reviewed with him a number of problems and discussed particularly the present political situation in India.

2. Members will be aware that since the offer by His Majesty's Government to India in March 1942 there has been no further progress towards the solution of the Indian constitutional problem.

3. As was then stated, the working out of India's new constitutional system is a task which can only be carried through by the Indian peoples themselves.

4. While His Majesty's Government are at all times most anxious to do their utmost to assist the Indians in the working out

of a new constitutional settlement, it would be a contradiction in terms to speak of the imposition by this country of self-governing institutions upon an unwilling India. Such a thing is not possible, nor could we accept the responsibility for enforcing such institutions at the very time when we were, by its purpose, withdrawing from all control of British Indian affairs.

5. The main constitutional position remains, therefore, as it was. The offer of March 1942 stands in its entirety, without change or qualification. His Majesty's Government still hope that the political leaders in India may be able to come to an agreement as to their procedure whereby India's permanent future form of government can be determined.

6. His Majesty's Government are, however, most anxious to make any contribution that is practicable to the breaking of the political deadlock in India. While a deadlock lasts, not only political but social and economic progress is being hampered.

7. The Indian administration, over-burdened with the great task laid upon it by the war against Japan and by the planning for the post-war period, is further strained by the political tension that exists.

8. All that is so urgently required to be done for agricultural and industrial development and for the peasants and workers of India cannot be carried through unless the whole-hearted co-operation of every community and section of the Indian people is forthcoming.

9. His Majesty's Government have therefore considered whether there is something which they could suggest in this interim period, under the existing Constitution, pending the formulation by Indians of their future constitutional arrangements, which would enable the main communities and parties to co-operate more closely together and with the British to the benefit of the people of India as a whole.

10. It is not the intention of His Majesty's Government to introduce any change contrary to the wishes of the major Indian communities. But they are willing to make possible some step forward during the interim period if the leaders of the principal Indian parties are prepared to agree to their suggestions and to co-operate in the successful conclusion of the war against Japan as well as in the reconstruction in India which must follow the final victory.

11. To this end they would be prepared to see an important change in the composition of the Viceroy's Executive. This is possible without making any change in the existing statute law except for one amendment to the Ninth Schedule to the Act of 1935. That



Schedule contains a provision that not less than three members of the Executive must have had at least ten years' service under the Crown in India. If the proposals of His Majesty's Government meet with acceptance in India, that clause would have to be amended to dispense with that requirement.

12. It is proposed that the Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the Centre and in the Provinces, in proportions which would give a balanced representation of the main communities, including equal proportions of Moslems and Caste Hindus.

13. In order to pursue this object, the Viceroy will call into conference a number of leading Indian politicians who are the heads of the most important parties or who have had recent experience as Prime Ministers of Provinces, together with a few others of special experience and authority.<sup>1</sup> The Viceroy intends to put before this conference the proposal that the Executive Council should be reconstituted as above stated and to invite from the members of the conference a list of names. Out of these he would hope to be able to choose the future members whom he would recommend for appointment by His Majesty to the Viceroy's Council, although the responsibility for the recommendations must of course continue to rest with him, and his freedom of choice therefore remains unrestricted.

14. The members of his Council who are chosen as a result of this arrangement would of course accept the position on the basis that they would whole-heartedly co-operate in supporting and carrying through the war against Japan to its victorious conclusion.

15. The members of the Executive Council would be Indians with the exception of the Viceroy and the Commander-in-Chief, who would retain his position as War Member. This is essential so long as the defence of India remains a British responsibility.

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1. His Excellency the Viceroy, Lord Wavell, in his broadcast talk on June 14, 1945, said:

"I have considered the best means of forming such a council; and have decided to invite the following to Viceregal Lodge to advise me:

"Those now holding office as Premier in a Provincial Government; or for Provinces now under Section 93 Government, those who last held the office of Premier.

"The Leader of the Congress Party and the Deputy Leader of the Muslim League in the Central Assembly; the Leaders of the Congress Party and the Muslim League in the Council of State; also the Leaders of the Nationalist Party and the European Group in the Assembly.

"Mr. Gandhi and Mr. Jinnah as the recognized leaders of the two main political parties.

"Rao Bahadur N. Shiva Raj to represent the Scheduled Classes. Master Tara Singh to represent the Sikhs."—Speeches by Lord Wavell pp. 73-76.



16. Nothing contained in any of these proposals will affect the relations of the Crown with the Indian States through the Viceroy as Crown Representative.

17. The Viceroy has been authorized by His Majesty's Government to place this proposal before the Indian leaders. His Majesty's Government trust that the leaders of the Indian communities will respond. For the success of such a plan must depend upon its acceptance in India and the degree to which responsible Indian politicians are prepared to co-operate with the object of making it a workable interim arrangement. In the absence of such general acceptance existing arrangements must necessarily continue.

18. If such co-operation can be achieved at the Centre it will no doubt be reflected in the Provinces and so enable responsible Governments to be set up once again in those Provinces where, owing to the withdrawal of the majority party from participation, it became necessary to put into force the powers of the Governors under Section 93 of the Act of 1935. It is to be hoped that in all the Provinces these Governments would be based on the participation of the main parties, thus smoothing out communal differences and allowing Ministers to concentrate upon their very heavy administrative tasks.

19. There is one further change which, if these proposals are accepted, His Majesty's Government suggest should follow.

20. That is, that External Affairs (other than those tribal and frontier matters which fall to be dealt with as part of the defence of India) should be placed in the charge of an Indian Member of the Viceroy's Executive so far as British India is concerned, and that fully accredited representatives shall be appointed for the representation of India abroad.<sup>1</sup>

21. By their acceptance of and co-operation in this scheme the Indian leaders will not only be able to make their immediate contribution to the direction of Indian affairs, but it is also to be hoped that their experience of co-operation in Government will expedite agreement between them as to the method of working out the new constitutional arrangements.

22. His Majesty's Government consider, after the most careful study of the question, that the plan now suggested gives the utmost progress practicable within the present constitution. None of the changes suggested will in any way prejudice or prejudge the

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1. Lord Wavell, in his broadcast talk on June 14, 1945, said: "A further step proposed by His Majesty's Government is the appointment of a British High Commissioner in India, as in the Dominions, to represent Great Britain's commercial and other such interests in India."

essential form of the future permanent Constitution or Constitutions for India.

23. His Majesty's Government feel certain that given goodwill and a genuine desire to co-operate on all sides, both British and Indian, the proposals can mark a genuine step forward in the collaboration of the British and Indian peoples towards Indian self-government and can assert the rightful position, and strengthen the influence, of India in the counsels of the nations.

5

LORD WAVELL'S STATEMENT TO THE SIMLA CONFERENCE  
ANNOUNCING THE FAILURE OF THE NEGOTIATIONS,  
DATED JULY 14, 1945<sup>1</sup>

1. As you know, my original intention was that the Conference should agree upon the strength and composition of the Executive Council, and that thereafter parties should send me lists of names. To these lists I would, if necessary, have added names of my own, and attempted to form on paper, an Executive Council which might be acceptable to His Majesty's Government, myself, and the Conference. I intended to discuss my selections with the leaders, and finally to put them to the Conference.

2. Unfortunately, the Conference was unable to agree about the strength and composition of the Executive Council, and on the 29th June I undertook, with the approval of the Conference, to endeavour to produce a solution not based on any formula agreed in advance. I asked the parties to let me have lists of names, and said I would do what I could to produce a solution acceptable to the leaders and to the Conference.

3. I received lists from all parties represented here except from the European Group, who decided not to send a list, and the Muslim League. I was, however, determined that the Conference should not fail until I had made every possible effort to bring it to a successful ending. I therefore made my provisional selections including certain Muslim League names, and I have every reason to believe that if these selections had been acceptable here they would have been acceptable to His Majesty's Government.

4. My selections would, I think, have given a balanced and efficient Executive Council, whose composition would have been

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1. *Speeches by Lord Wavell, 1943-47*, pp. 79-80 (Governor-General's Press, New Delhi 1948).

reasonably fair to all the parties. I did not find it possible, however, to accept the claims of any party in full. When I explained my solution to Mr. Jinnah he told me that it was not acceptable to the Muslim League, and he was so decided that I felt it would be useless to continue the discussions. In the circumstances I did not show my selections as a whole to Mr. Jinnah, and there was no object in showing them to the other leaders.

5. The Conference has therefore failed. Nobody can regret this more than I do myself. I wish to make it clear that the responsibility for the failure is mine. The main idea underlying the Conference was mine. If it had succeeded, its success would have been attributed to me, and I cannot place the blame for its failure upon any of the parties. I asked the party leaders to accept this view, and to do all they can to ensure that there are no recriminations. It is of the utmost importance that this effort to secure agreement between the parties and communities should not result in a worsening of communal feeling. I ask you all to exercise the greatest possible restraint.

6

GENERAL ELECTIONS AND PLANS FOR SUMMONING A  
CONSTITUTION-MAKING BODY: BROADCAST SPEECH BY  
THE VICEROY, LORD WAVELL, SEPTEMBER 19, 1945<sup>1</sup>

After my recent discussions with His Majesty's Government in London, they authorized me to make the following announcement:

As stated in the gracious speech from the Throne at the Opening of Parliament, His Majesty's Government are determined to do their utmost to promote in conjunction with the leaders of Indian opinion the early realization of full self-government in India. During my visit to London they have discussed with me the steps to be taken.

An announcement has already been made that elections to the Central and Provincial Legislatures, so long postponed owing to the war, are to be held during the coming cold weather. Thereafter His Majesty's Government earnestly hope that ministerial responsibility will be accepted by political leaders in all provinces.

It is the intention of His Majesty's Government to convene as soon as possible a constitution-making body, and as a preliminary step they have authorized me to undertake, immediately after the elections, discussions with representatives of the Legislative Assem-

1. *Wavell, op. cit.*, pp. 83-5.

blies in the Provinces, to ascertain whether the proposals contained in the 1942 Declaration are acceptable or whether some alternative or modified scheme is preferable. Discussions will also be undertaken with the representatives of the Indian States with a view to ascertaining in what way they can best take their part in the constitution-making body.

His Majesty's Government are proceeding to the consideration of the content of the treaty which will require to be concluded between Great Britain and India.

During these preparatory stages, the Government of India must be carried on, and urgent economic and social problems must be dealt with. Furthermore, India has to play her full part in working out the new world order. His Majesty's Government have therefore further authorized me, as soon as the results of the Provincial elections are published, to take steps to bring into being an Executive Council which will have the support of the main Indian parties.

That is the end of the announcement which His Majesty's Government have authorized me to make.

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We must first hold elections so that the will of the Indian electorate may be known. It is not possible to undertake any major alteration of the franchise system. This would delay matters for at least two years. But we are doing our best to revise the existing electoral rolls efficiently. After the elections, I propose to hold discussions with representatives of those elected, and of the Indian States to determine the forms which the constitution-making body should take, its powers and procedure. The draft Declaration of 1942 proposed a method of setting up a constitution-making body but His Majesty's Government recognize that, in view of the great issues involved and the delicacy of the Minority problems, consultation with the people's representatives is necessary before the form of the constitution-making body is finally determined.

## 7

PARLIAMENTARY DELEGATION TO INDIA: STATEMENT BY LORD PETHICK-LAWRENCE, SECRETARY OF STATE FOR INDIA, IN THE HOUSE OF LORDS, DATED DECEMBER 4, 1945<sup>1</sup>

I desire to make it plain that His Majesty's Government regard the setting up of a constitution-making body by which Indians will decide their own future as a matter of the greatest urgency.

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1. *The Indian Annual Register*, 1945, vol. II, pp. 150-1.

The statement made by the Viceroy after his return to India<sup>1</sup> contemplates steps which His Majesty's Government propose should be taken to promote early realisation of full self-government in India. The full significance of these proposals does not seem to have been properly appreciated in India.<sup>2</sup> Since it is the firm conviction of His Majesty's Government that it is by, and in consultation with, directly elected representatives of the Indian people that decisions as to the future governance of British India should be taken, it was a necessary preliminary that elections should be held to the Provincial Legislatures and the Central Assembly in India. It was announced that after the elections in India preparatory discussions would be held with the elected representatives of British India and with the Indian States in order to secure the widest measure of agreement as to the method of framing the Constitution.

Unjustified suggestions have gained wide currency in India that these discussions would be fruitful source of delay. I desire to make it plain that His Majesty's Government regard the setting up of a constitution-making body, by which Indians will decide their own future, and also other proposals embodied in the announcement as a matter of the greatest urgency.

This misunderstanding has led His Majesty's Government to consider whether opportunities of personal contact between this country and India, which have been greatly interrupted during recent years, cannot now be increased.

#### *Purpose of M.P.'s Mission*

They regard it as a matter of importance that members of our own Parliament should have an opportunity to meet leading political Indian personalities to learn their own views at first hand. They would also be able to convey in person the general wish and desire of the people of this country that India should speedily attain her

1. See pp. 567-8 of the above Register.

2. On the Viceregal statement referred to above, the Working Committee of the Indian National Congress, in its resolution of September 23, 1945, observed:

"The proposals now made are, in the opinion of the All-India Congress Committee, vague, inadequate and unsatisfactory.

"The announcement that general elections will be held for the Central and Provincial Assemblies has been made in a manner and in circumstances which arouse suspicion. The sudden dissolution of the Legislatures in some Provinces has emphasized the hostility of the present Governmental authorities to even the possibility of popular government in the meantime, and is totally indefensible. The Central Assembly is still governed by the Act of 1919. To continue such an impotent and undemocratic Central Legislature, constituted a fraud on the franchise of Indian freedom.

"If elections for the Central Legislature are to be held they must at least be on a properly revised register, even though this might involve some little delay. In spite of assurances the electoral rolls for the Central and Provincial Assemblies are not being properly revised."—*The Indian Annual Register 1945*, vol. II, pp. 93-4.

full and rightful position as an independent partner state in the British Commonwealth and the desire of Parliament to do everything within our power to promote speedy attainment of that objective.

His Majesty's Government are, therefore, arranging for a Parliamentary delegation to go to India under the auspices of the Empire Parliamentary Association. The intention is that this party should leave this country as soon as possible. In view of the difficulties of transport, it will be limited in size. The delegation will be selected by the Association in consultation with Parliamentary representatives of the chief political parties in this country.

During the transition towards complete self-Government, India will be passing through difficult times. No greater disservice could be done to the future Indian Government and to the cause of democracy than to permit the foundations of the State to be weakened and the loyalty of its servants to those who are in authority to be undermined before that new Government comes into being.

#### *Obligation to Maintain Law and Order*

Therefore Government of India cannot divest itself of the responsibility, which rests upon it and upon all Provincial Governments, in preserving law and order and of resisting any attempt to resolve the constitutional issue by force. Realisation of full self-government can only come by orderly and peaceful transfer of control of the machinery of State to purely Indian authority.

His Majesty's Government could not permit any attempt to be made to break down the loyalty of the administrative services or of the Indian armed forces, and they will give full support to the Government of India in securing that their servants are protected in the performance of their duty and that the future constitution of India shall not be called into being by force or threat of force.

#### *Reconstruction Schemes*

In addition, the great need of India, whatever Governments are in power, is to raise the standard of life, of education and of health of the masses of people. Boldly conceived plans to meet this are already in being and His Majesty's Government are giving every encouragement to proceed with them, so that improving social conditions may go forward simultaneously with the institution of self-Government.

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The Earl of Munster (Conservative), former Under-Secretary for India, thanking Lord Pethick-Lawrence for the statement, said:

"We should like, if we may, to examine his statement with the care and consideration due to it in order that we may, if necessary, put down a motion to suit his convenience to discuss it properly. I am glad to know that His Majesty's Government do not propose to yield to tyranny or force. Perhaps, I might ask whether this delegation under the auspices of the Empire Parliamentary Association, who are to proceed to India, will be accompanied by the Under-Secretary or any other Minister and whether it is quite clear that no one in this delegation can commit His Majesty's Government or the Government of India in anything they may say or do during the period of their tour."

Lord Pethick-Lawrence: "The question whether the Under-Secretary will go will be a matter for consideration by the Empire Parliamentary Association in deciding upon the names of the delegation. This visit follows upon lines of similar visits made to India and other parts of His Majesty's Dominions and Empire, and it is not the practice, and it is not the intention of His Majesty's Government in the present case, that the delegation should be given any powers to commit His Majesty's Government to any special policy, though, of course, the policy to which His Majesty's Government have already given expression does, no doubt, form the background and atmosphere in which the delegation will proceed."

## PART TWO

### 8

#### STATEMENT BY LORD PETHICK-LAWRENCE, SECRETARY OF STATE FOR INDIA, IN THE HOUSE OF LORDS ON FEBRUARY 19, 1946<sup>1</sup>

The House will recall that on 19th September 1945, on his return to India after discussions with the British Government, the Viceroy made a statement of policy<sup>2</sup> in the course of which he outlined the positive steps to be taken immediately after the Central and Provincial elections to promote, in conjunction with leaders of Indian opinion, early realization of full self-government in India.

Those steps include: first, preparatory discussions with elected representatives of British India and with Indian States in order to secure the widest measure of agreement as to the method of framing a Constitution; second, the setting up of a constitution-making body; and third, the bringing into being of an Executive Council having the support of the main Indian parties.

Elections at the Centre were held at the end of last year and in some of the Provinces they are also over and responsible Governments are in the process of formation. In other Provinces polling dates are spread over the next few weeks. With the approach of the end of the electoral campaign, the British Government have been considering the most fruitful method of giving effect to the programme to which I have referred.

In view of the paramount importance, not only to India and to the British Commonwealth but to the peace of the world, of a successful outcome of discussions with leaders of Indian opinion, the British Government have decided with the approval of His Majesty the King to send out to India a special mission of Cabinet Ministers consisting of the Secretary of State for India (Lord Pethick-Lawrence), the President of the Board of Trade (Sir Stafford Cripps) and the First Lord of the Admiralty (Mr. A.V. Alexander) to act in association with the Viceroy in this matter.

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1. *The Indian Annual Register* 1946, vol. I, p. 129.

2. Above, p. 16.



STATEMENT BY THE CABINET MISSION AND THE VICEROY,  
DATED MAY 16, 1946<sup>1</sup>

1. On the 15th March last, just before the dispatch of the Cabinet Mission to India, Mr. Attlee, the British Prime Minister, used these words:

‘My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision....’

‘I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so....’

‘But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible.’

2. Charged in these historic words, we—the Cabinet Ministers and the Viceroy—have done our utmost to assist the two main political parties to reach agreement upon the fundamental issue of the unity or division of India. After prolonged discussions in New Delhi we succeeded in bringing the Congress and the Muslim League together in conference at Simla. There was a full exchange of views and both parties were prepared to make considerable concessions in order to try to reach a settlement, but it ultimately proved impossible to close the remainder of the gap between the parties and so no agreement could be concluded. Since no agreement has been reached, we feel that it is our duty to put forward what we consider are the best arrangements possible to ensure a speedy setting up of the New Constitution. This statement is made with the full approval of His Majesty’s Government in the United Kingdom.

3. We have accordingly decided that immediate arrangements should be made whereby Indians may decide the future Constitution of India, and an Interim Government may be set up at once to carry on the administration of British India until such time as a new Constitution can be brought into being. We have endeavoured to be just to the smaller as well as to the larger sections of the

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1. Cmd. 6821.

people; and to recommend a solution which will lead to a practicable way of governing the India of the future, and will give a sound basis for defence and a good opportunity for progress in the social, political and economic field.

4. It is not intended in this statement to review the voluminous evidence which has been submitted to the Mission; but it is right that we should state that it had shown an almost universal desire, outside the supporters of the Muslim League, for the unity of India.

5. This consideration did not, however, deter us from examining closely and impartially the possibility of a partition of India; since we were greatly impressed by the very genuine and acute anxiety of the Muslims lest they should find themselves subjected to a perpetual Hindu-majority rule. This feeling has become so strong and widespread amongst the Muslims that it cannot be allayed by mere paper safeguards. If there is to be internal peace in India it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, and economic or other interests.

6. We therefore examined in the first instance the question of a separate and fully independent sovereign state of Pakistan as claimed by the Muslim League. Such a Pakistan would comprise two areas: one in the North-West consisting of the Provinces of the Punjab, Sind, North-West Frontier, and British Baluchistan; the other in the North-East consisting of the Provinces of Bengal and Assam. The League was prepared to consider adjustment of boundaries at a later stage, but insisted that the principle of Pakistan should first be acknowledged. The argument for a separate state of Pakistan was based, first, upon the right of the Muslim majority to decide their method of government according to their wishes and, secondly, upon the necessity to include substantial areas in which Muslims are in a minority, in order to make Pakistan administratively and economically workable.

The size of the non-Muslim Minorities in a Pakistan comprising the whole of the six Provinces enumerated above would be very considerable as the following figures show:<sup>1</sup>

<i>North-Western Area</i>					Muslim	Non-Muslim
Punjab ...	...	...	...	...	16,217,242	12,201,577
North-West Frontier Province				...	2,788,797	249,270
Sind ...	...	...	...	...	3,208,325	1,326,683
British Baluchistan	...	...	...	...	438,930	62,701
					22,653,294	13,840,231
					62.07 per cent	37.93 per cent

1. All population figures in this statement are from the most recent census taken in 1941.

# INDIAN CONSTITUTIONAL DOCUMENTS

## *North-Eastern Area*

Bengal ...	...	...	...	...	33,005,434	27,301,091
Assam ...	...	...	...	...	3,442,479	6,762,254
					36,447,913	34,063,345
					51.69 per cent	48.31 per cent

The Muslim Minorities in the remainder of British India number some 20 million dispersed amongst a total population of 188 million.

These figures show that the setting up of a separate sovereign state of Pakistan on the lines claimed by the Muslim League would not solve the communal minority problem; nor can we see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan can equally, in our view, be used in favour of the exclusion of the non-Muslim areas from Pakistan. This point would particularly affect the position of the Sikhs.

7. We, therefore, considered whether a smaller sovereign Pakistan confined to the Muslim-majority areas alone might be a possible basis of compromise. Such a Pakistan is regarded by the Muslim League as quite impracticable because it would entail the exclusion from Pakistan of (a) the whole of the Ambala and Jullundur Divisions in the Punjab; (b) the whole of Assam except the district of Sylhet; and (c) a large part of Western Bengal, including Calcutta, in which city the percentage of the Muslim population is 23.6 per cent. We ourselves are also convinced that any solution which involves a radical partition of the Punjab and Bengal, as this would do, would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Bengal and the Punjab each has its own common language and a long history and tradition. Moreover, any division of the Punjab would of necessity divide the Sikhs, leaving substantial bodies of Sikhs on both sides of the boundary. We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign state of Pakistan would provide an acceptable solution for the communal problem.

8. Apart from the great force of the foregoing arguments there are weighty administrative, economic and military considerations. The whole of the transportation and postal and telegraph systems of India have been established on the basis of a united India. To disintegrate them would gravely injure both parts of India. The case for a united defence is even stronger. The Indian Armed Forces have been built up as a whole for the defence of India as a whole,

## STATEMENT BY THE CABINET MISSION AND THE VICEROY

and to break them in two would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army and would entail the gravest dangers. The Indian Navy and Indian Air Force would become much less effective. The two sections of the suggested Pakistan contain the two most vulnerable frontiers in India and for a successful defence in depth the area of Pakistan would be insufficient.

9. A further consideration of importance is the greater difficulty which the Indian States would find in associating themselves with a divided British India.

10. Finally, there is the geographical fact that the two halves of the proposed Pakistan state are separated by some seven hundred miles and the communications between them both in war and peace would be dependent on the goodwill of Hindustan.

11. We are therefore unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign states.

12. This decision does not however blind us to the very real Muslim apprehensions that their culture and political and social life might become submerged in a purely unitary India, in which the Hindus with their greatly superior numbers must be a dominating element. To meet this the Congress have put forward a scheme under which Provinces would have full autonomy subject only to a minimum of Central subjects, such as Foreign Affairs, Defence and Communications.

Under this scheme Provinces, if they wished to take part in economic and administrative planning on a large scale, could cede to the Centre optional subjects in addition to the compulsory ones mentioned above.

13. Such a scheme would, in our view, present considerable constitutional disadvantages and anomalies. It would be very difficult to work a Central Executive and Legislature in which some Ministers, who dealt with compulsory subjects, were responsible to the whole of India while other Ministers, who dealt with optional subjects, would be responsible only to those Provinces who had elected to act together in respect of such subjects. This difficulty would be accentuated in the Central Legislature, where it would be necessary to exclude certain members from speaking and voting when subjects with which their Provinces were not concerned were under discussion. Apart from the difficulty of working such a scheme, we do not consider that it would be fair to deny to other Provinces, which did not desire to take the optional subjects at the Centre, the right to form themselves into a group for a similar pur-

pose. This would indeed be no more than the exercise of their autonomous powers in a particular way.

14. Before putting forward our recommendations we turn to deal with the relationship of the Indian states to British India. It is quite clear that with the attainment of independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government. This fact has been fully recognized by those whom we interviewed from the States. They have at the same time assured us that the States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure, and it by no means follows that it will be identical for all the States. We have not, therefore, dealt with the States in the same detail as the Provinces of British India in the paragraphs which follow.

15. We now indicate the nature of a solution which in our view would be just to the essential claims of all parties and would at the same time be most likely to bring about a stable and practicable form of Constitution for all India.

We recommend that the Constitution should take the following basic form:

(1) There should be a Union of India, embracing both British India and the States which should deal with the following subjects: Foreign Affairs, Defence, and Communications; and should have the powers necessary to raise the finances required for the above subjects.

(2) The Union should have an Executive and Legislature constituted from British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

(3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.

(4) The States will retain all subjects and powers other than those ceded to the Union.

(5) Provinces should be free to form Groups with Executives and Legislatures, and each group could determine the Provincial subjects to be taken in common.

## STATEMENT BY THE CABINET MISSION AND THE VICEROY

(6) The Constitution of the Union and of the groups should contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the Constitution after an initial period of ten years and at ten-yearly intervals thereafter.

16. It is not our object to lay out the details of a Constitution on the above programme but to set in motion the machinery, whereby a Constitution can be settled by Indians for Indians.

It has been necessary, however, for us to make this recommendation as to the broad basis of the future Constitution because it became clear to us in the course of our negotiations that not until that had been done was there any hope of getting the two major communities to join in the setting up of the constitution-making machinery.

17. We now indicate the constitution-making machinery which we propose should be brought into being forthwith in order to enable a new constitution to be worked out.

18. In forming any assembly to decide a new constitutional structure the first problem is to obtain as broad-based and accurate a representation of the whole population as is possible. The most satisfactory method obviously would be by election based on adult franchise, but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new Constitution. The only practicable alternative is to utilize the recently elected Provincial Legislative Assemblies as electing bodies. There are, however, two factors in their composition which make this difficult. First, the numerical strengths of Provincial Legislative Assemblies do not bear the same proportion to the total population in each Province. Thus, Assam, with a population of 10 millions has a Legislative Assembly of 108 members, while Bengal, with a population six times as large, has an Assembly of only 250. Secondly, owing to the weightage given to Minorities by the Communal Award, the strengths of the several communities in each Provincial Legislative Assembly are not in proportion to their numbers in the Province. Thus the number of seats reserved for Moslems in the Bengal Legislative Assembly is only 48 per cent of the total, although they form 55 per cent of the Provincial population. After a most careful consideration of the various methods by which these points might be corrected, we have come to the conclusion that the fairest and most practicable plan would be:

(a) to allow to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage;

# INDIAN CONSTITUTIONAL DOCUMENTS

(b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population;

(c) to provide that the representative allocated to each community in a Province shall be elected by members of that community in its Legislative Assembly.

We think that for these purposes it is sufficient to recognize only three main communities in India, General, Muslim and Sikh, the 'General' community including all persons who are not Muslims or Sikhs. As the smaller minorities would, upon a population basis, have little or no representation, since they would lose the weightage which assures them seats in Provincial Legislatures, we have made the arrangements set out in paragraph 20 below to give them a full representation upon all matters of special interests to Minorities.

19. (i) We therefore propose that there shall be elected by each Provincial Legislative Assembly the following numbers of representatives, each part of the Legislative Assembly (General, Muslim or Sikh) electing its own representatives by the method of proportional representation with single transferable vote:

*Table of Representation*

SECTION—A							
Province					General	Muslim	Total
Madras ...	...	...	...	...	45	4	49
Bombay ...	...	...	...	...	19	2	21
United Provinces	...	...	...	...	47	8	55
Bihar ...	...	...	...	...	31	5	36
Central Provinces	...	...	...	...	16	1	17
Orissa ...	...	...	...	...	9	0	9
Total ...					167	20	187

SECTION—B						
Province			General	Muslim	Sikhs	Total
Punjab ...	...	...	8	16	4	28
North-West Frontier Province			0	3	0	3
Sind	...	...	1	3	0	4
Total ...			9	22	4	35



STATEMENT BY THE CABINET MISSION AND THE VICEROY

SECTION—C					General	Muslim	Total
Province							
Bengal ...	...	...	...	...	27	33	60
Assam ...	...	...	...	...	7	3	10
Total ...					34	36	70
Total for British India ...					...	292	
Maximum for Indian States ...					...	93	
Total ...					...	385	

**Note:** In order to represent the Chief Commissioners' Provinces there will be added to Section A the Member representing Delhi in the Central Legislative Assembly, the Member representing Ajmer-Merwara in the Central Legislative Assembly, and a representative to be elected by the Coorg Legislative Council.

To Section B will be added a representative of British Baluchistan.

(ii) It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the methods of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a Negotiating Committee.

(iii) Representatives thus chosen shall meet at New Delhi as soon as possible.

(iv) A preliminary meeting will be held at which the general order of business will be decided, a chairman and other officers elected and an Advisory Committee (see paragraph 20 below) on rights of citizens, Minorities and Tribal and Excluded Areas set up. Thereafter the Provincial representatives will divide up into three Sections shown under A, B and C in the Table of Representation in sub-paragraph (i) of this paragraph.

(v) These Sections shall proceed to settle Provincial Constitutions for the Provinces included in each Section, and shall also decide whether any group constitution shall be set up for those Provinces and, if so, with what Provincial subjects the group should deal. Provinces shall have the power to opt out of groups in accordance with the provisions of sub-clause (viii) below.

(vi) The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution.



(vii) In the Union Constituent Assembly resolutions varying the provisions of paragraph 15 above for raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.

(viii) As soon as the new constitutional arrangements have come into operation it shall be open to any Province to elect to come out of any group in which it has been placed. Such a decision shall be taken by the Legislature of the Province after the first general election under the new Constitution.

20. The Advisory Committee on the rights of citizens, minorities and Tribal and Excluded Areas should contain due representation of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, clauses for protecting Minorities, and a scheme for the administration of the Tribal and Excluded Areas, and to advise whether these rights should be incorporated in the Provincial, Group or Union Constitutions.

21. His Excellency the Viceroy will forthwith request the Provincial Legislatures to proceed with the election of their representatives and the States to set up a Negotiating Committee.

It is hoped that the process of constitution-making can proceed as rapidly as the complexities of the task permit so that the interim period may be as short as possible.

22. It will be necessary to negotiate a treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power.

23. While the constitution-making proceeds, the administration of India has to be carried on. We attach the greatest importance therefore to the setting up at once of an Interim Government having the support of the political parties. It is essential during the interim period that there should be the maximum of co-operation in carrying through the difficult tasks that face the Government of India. Besides the heavy tasks of day-to-day administration, there is the grave danger of famine to be countered, there are decisions to be taken in many matters of post-war development which will have a far-reaching effect on India's future and there are important international conferences in which India has to be represented. For all these purposes a Government having popular support is necessary.

## STATEMENT BY THE CABINET MISSION AND THE VICEROY

The Viceroy has already started discussions to this end, and hopes soon to form an Interim Government in which all the portfolios, including that of War Member, will be held by Indian leaders having the full confidence of the people. The British Government, recognizing the significance of the changes, will give the fullest measure of co-operation to the Government so formed in the accomplishment of its tasks of administration and in bringing about as rapid and smooth a transition as possible.

24. To the leaders and people of India, who now have the opportunity of complete independence, we would finally say this. We and our Government and countrymen hoped that it would be possible for the Indian people themselves to agree upon the method of framing the new constitution under which they will live. Despite the labours which we have shared with the Indian parties and the exercise of much patience and goodwill by all, this has not been possible. We, therefore, now lay before you proposals which, after listening to all sides and after much earnest thought, we trust will enable you to attain your independence in the shortest time and with the least danger of internal disturbance and conflict. These proposals may not, of course, completely satisfy all parties, but you will recognize with us that, at this supreme moment in Indian history, statesmanship demands mutual accommodation and we ask you to consider the alternative to the acceptance of these proposals. After all the efforts which we and the Indian parties have made together for agreement, we must state that, in our view there is small hope of a peaceful settlement by the agreement of the Indian parties alone. The alternative would, therefore, be a grave danger of violence, chaos and even civil war. The reason and duration of such a disturbance cannot be foreseen, but it is certain that it would be a terrible disaster for many millions of men, women and children. This is a possibility which must be regarded with equal abhorrence by the Indian people, our own countrymen and the world as a whole. We therefore lay these proposals before you in the profound hope that they will be accepted and operated by you in the spirit of accommodation and goodwill in which they are offered. We appeal to all who have the future good of India at heart to extend their vision beyond their own community or interest to the interests of the whole 400 millions of Indian people.

We hope that the new independent India may choose to be a member of the British Commonwealth. We hope, in any event, that you will remain in close and friendly association with our people. But these are matters for your own free choice. Whatever that choice may be, we look forward with you to your ever-increasing

prosperity among the greatest nations of the world and to a future even more glorious than your past.

10

STATEMENT OF SIR STAFFORD CRIPPS AT PRESS  
CONFERENCE IN NEW DELHI ON MAY 16, 1946<sup>1</sup>

You have heard two broadcasts on the statement and you have the document before you. This evening the members of the Mission wanted an opportunity to meet you to give you a few words of explanation and to-morrow we shall be meeting you again to answer questions which you may have to put. I will make a few remarks about the statement while we are waiting for the Secretary of State to come from the broadcasting studio.

The first I want to point out is what the statement does not purport to do. Let me remind you that this is not merely the Mission's statement, that is the statement of the four signatories, but is the statement of His Majesty's Government in the United Kingdom. Now the statement does not purport to set out a new constitution for India. It is of no use asking us, "How do you propose to do this or that?" The answer will be we don't propose to do anything as regards decision upon a constitution; that is not for us to decide.

What we have had to do is to lay down one or two broad principles of how the constitution might be constructed and recommend those as foundations to Indian people. You will notice we use the word "recommend" with regard to the ultimate constitutional forms with which we deal. You may quite fairly ask: "But why do you recommend anything? Why not leave it to the Indians?" The answer is that we are most anxious to get all Indians into some constitution-making machinery as quickly as possible and the block at present is in this matter. We are, therefore, by this means trying to remove the block so that the constitution-making may start and progress freely and rapidly. We hope very earnestly that that will be the effect. Now that it has been finally and absolutely decided that India is to have the complete Independence she desires, whether within or without the British Commonwealth as she chooses, we are anxious that she shall have it as soon as possible and the soonest is when there is a new constitutional structure decided upon by the Indian people.

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1. *Indian Annual Register* 1946, vol. I, pp. 153-55.

## STATEMENT OF SIR STAFFORD CRIPPS

But of course we cannot just stand by and wait till that time comes. It is bound to take some time to reach that point of completion of the new constitutional structure.

So, as you know, the Viceroy in whose province Government-making primarily lies, has already started his talks with a view to the immediate setting up of a representative Indian Government. We hope that with the other issues out of the way on the basis of our statement he will be able very rapidly to get that new Government representative of the main parties set up and in operation.

This matter of the Interim Government is of supreme importance because of the enormous task facing India at the moment. It is these great tasks, and perhaps the greatest of them is to deal with the food situation, that make it absolutely essential that we should between us arrange a smooth, and efficient transition.

Nothing could be more fatal to the Indian people to-day in the face of dangers of famine than a breakdown of administration and communications anywhere in India, and that is why we stress as we do the vital need for co-operation between all parties and communities including the British in the time of transition.

So much then for the vitally important point of the Interim Government. Some of you may wonder how soon this means that the British will sever their Government connection with India—I hope that, in any event we shall remain the closest friends, when Indian freedom comes. Well, we certainly can't say that. Who can foretell how quickly constitutions can be hammered out? One thing is, however, absolutely certain and this is the quicker you start the quicker you will end and the sooner we shall be able to withdraw, handing over the power to the new Governments of the Union, provinces and, if it is so decided, of the Groups.

This brings me to what has been decided rather than recommended. It has been decided to make a start with the constitution-making right away. This does not mean a decision as to what the constitution shall finally be, that is for decision by the representatives of the Indian people. What it does mean is that the deadlock which has prevented a start on the process of constitution-making is to be removed once and for all.

The form in which we propose that the constitution-making bodies should be assembled is important for this reason. It permits of arriving at constitutions in the recommended form. It goes a little further than that in one respect. As we believe and hope that the two parties will come into the constitution-making on the basis of our recommendation, it would not be fair to either of them if

the fundamental basis which we recommend could be easily departed from. So we stipulate that a departure from that basis which is laid down in paragraph 15 of the statement should only be made if majority of both communities agree to it. That I think is eminently fair to both parties. I do not mean that no departure can be made from the recommendations, but it does mean that the special provisions I have mentioned will apply to such resolutions in the Constituent Assembly of the Union. This is one special provision as to particular majorities, the only other is in relation to matters raising any major communal issue, when a similar rule will apply. All the rest is left to the free play of discussion and vote.

The question, I am sure, will occur to all of you and that is why we have named the three sections of Provinces into which the Assembly will break up to formulate the Provincial and group constitutions.

There was a very good reason for this. First of all, of course, somehow or other those groups had to be formed before they could proceed to their business. There were two ways of dealing with that matter. Either let the present Provincial Governments opt themselves into groups or—after seeing the Constitutions produced—let the new Governments after the whole constitution-making is complete opt themselves out if they wish.

We have chosen the second alternative for two reasons. First, because it follows the suggestion the Congress put forward as regards the Provinces and a single Federation. They suggested that all the Provinces should come in at the beginning but could opt out if they did not like the Constitution when they had seen it. We think that this principle should apply to the Groups. Secondly, the present Legislatures are not truly representative of the whole population because of the effect of the Communal Award with its weightages.

We have tried to get a scheme as near as possible to the full adult suffrage which would be fairest but which would take probably two years to work out—and no one believes that we could wait that length of time before starting on constitution-making. So we discard the present Legislatures as decisive for the option and say: let it be exercised when the first new elections have taken place, when no doubt there will be a much fuller franchise and when, if necessary, the precise issue can be raised at the election. So the three sections will formulate the Provincial and Group Constitutions and when that is done they work together with the States' representatives to make the Union constitution. This is the final phase.

## STATEMENT OF SIR STAFFORD CRIPPS

Now a word about the States. The statement in paragraph 14 makes the position quite clear that Paramountcy cannot be continued after the new constitution comes into operation, nor can it be handed over to anyone else. It is not necessary for me to state—I am sure—that a contract or agreement of this kind cannot be handed over to a third party without the consent of the States. They will, therefore, become wholly independent but they have expressed their wish to negotiate their way into the Union and that is a matter we leave to negotiate between the States and the British Indian Parties.

There is one other important provision which I would like to stress as it is somewhat novel in constitution-making. We were met by the difficulty of how we could deal fairly with the smaller Minorities, the Tribal and the Excluded Areas. In any constitution-making body it would be quite impossible to give them weightage which would secure for them any effective influence without gravely upsetting the balance between the major parties. To give them a tiny representation would be useless to them. So we decided that Minorities would be dealt with really in a double way. The major Minorities, such as the Hindus in Muslim Provinces, and the Muslims in Hindu Provinces, the Sikhs in the Punjab and the Depressed Classes who had considerable representation in a number of Provinces, would be dealt with by proportional representation in the main construction of the constitution-making bodies.

But in order to give these Minorities and particularly the smaller Minorities like the Indian Christians and the Anglo-Indians and also the tribal representatives a better opportunity of influencing Minority provisions, we have made provision for the setting up by the constitution-making body of an influential Advisory Commission which will take the initiative in the preparation of the list of fundamental rights, the Minority protection clauses and the proposals for the administration of Tribal and Excluded Areas. The Commission will make its recommendations to the constitution-making body and will also suggest at which stage or stages in the Constitution these provisions should be inserted, that is whether in the Union, group or Provincial Constitutions or in any two or more of them.

Now that I think gives you some picture of the main points with which we have dealt in our statement. There is only one other point that I want to stress before leaving the matter with you until to-morrow morning. You will realise, I am sure, how terribly important is this moment of decision for the Indian people.

We are all agreed that we want a speedy conclusion of these matters; so far we have not been able to agree upon how it should

be brought about. We have done in this statement what we believed to be best after two months of discussion and very hard work and in the light of all we have heard and studied. This is our firm opinion and we do not, of course, intend to start all the negotiations over again. We intend to get on with the job on the lines we have laid down. We ask the Indian people to give this statement calm and careful consideration. I believe that the happiness for their future depends upon what they now do.

If, failing in their own agreement, they will accept this method that we put forward of getting on while the making of a new constitution for India, we can between us make it a smooth transition and a rapid one, but if the plan is not accepted no one can say how great will be the disturbance, or how acute and long the suffering that will be self-inflicted on the Indian people. We are convinced that this statement offers an honourable and peaceful method to all parties and if they will accept it we will do all that lies in our power to help forward the constitution-making so as to arrive at the speediest possible settlement.

Let no one doubt for one moment our intentions. We have not come to India and stayed here so long and worked so hard except to carry out what has long been the policy of the British Labour Party and that is to transfer power to the Indian people as quickly, as smoothly and as co-operatively as the difficulties of the process permit. We hope from the bottom of our hearts that the Indian people will accept the statement in the spirit of co-operation in which it has been drawn up, and that within a week or two the process of constitution-making may begin and the Interim Government may be formed.

## 11

### STATEMENT BY THE CABINET MISSION, DATED MAY 25, 1946<sup>1</sup>

1. The Delegation have considered the Statement of the President of the Muslim League dated 22nd May and the resolution dated 24th May of the Working Committee of the Congress.

2. The position is that since the Indian leaders, after prolonged discussion, failed to arrive at an agreement the Delegation put forward their recommendations as the nearest approach to reconciling the views of the two main parties. The scheme stands as a whole

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<sup>1</sup> 1. Cm. 6835.



## STATEMENT BY THE CABINET MISSION

and can only succeed if it is accepted and worked in a spirit of co-operation.

3. The Delegation wish also to refer briefly to a few points that have been raised in the statement and resolution.

4. The authority and the functions of the Constituent Assembly, and the procedure which it is intended to follow are clear from the Cabinet Delegation's statement. Once the Constituent Assembly is formed and working on this basis, there is no intention of interfering with its discretion or questioning its decisions. When the Constituent Assembly has completed its labours, His Majesty's Government will recommend to Parliament such action as may be necessary for the cession of sovereignty to the Indian people, subject only to two matters which are mentioned in the statement and which we believe are not controversial, namely, adequate provision for the protection of the minorities (paragraph 20 of the statement) and willingness to conclude a treaty with His Majesty's Government to cover matters arising out of the transfer of power (paragraph 22 of the statement).

5. It is a consequence of the system of election that a few Europeans can be elected to the Constituent Assembly. Whether the right so given will be exercised is a matter for them to decide.

6. The representative of Baluchistan will be elected in a joint meeting of the Shahi Jirga and the non-official Members of the Quetta Municipality.

7. In Coorg the whole Legislative Council will have the right to vote, but the official Members will receive instructions not to take part in the election.

8. The interpretation put by the Congress resolution on paragraph 15 of the Statement, to the effect that the Provinces can in the first instance make the choice whether or not to belong to the Section in which they are placed, does not accord with the Delegation's intentions. The reasons for the Grouping of the Provinces are well known and this is an essential feature of the scheme and can only be modified by agreement between the parties. The right to opt out of the Groups after the constitution-making has been completed will be exercised by the people themselves, since at the first election under the new Provincial constitution this question of opting out will obviously be a major issue and all those entitled to vote under the new franchise will be able to take their share in a truly democratic decision.

9. The question of how the States' representatives should be appointed to the Constituent Assembly is clearly one which must



be discussed with the States. It is not a matter for decision by the Delegation.

10. It is agreed that the Interim Government will have a new basis. That basis is that all portfolios including that of the War Member will be held by Indians and that the members will be selected in consultation with the Indian political parties. These are very significant changes in the Government of India, and a long step towards independence. His Majesty's Government will recognize the effect of these changes, will attach the fullest weight to them, and will give to the Indian Government the greatest possible freedom in the exercise of the day-to-day administration of India.

11. As the Congress statement recognises, the present Constitution must continue during the interim period; and the Interim Government cannot therefore be made legally responsible to the Central Legislature. There is, however, nothing to prevent the members of the Government, individually or by common consent, from resigning, if they fail to pass an important measure through the Legislature, or if a vote of no-confidence is passed against them.

12. There is, of course, no intention of retaining British troops in India against the wish of an independent India under the new Constitution; but during the interim period, which it is hoped will be short, the British Parliament has, under the present Constitution, the ultimate responsibility for the security of India and it is necessary, therefore, that British troops should remain.

## 12

### STATEMENT BY THE CABINET MISSION AND THE VICEROY ON THE FORMATION OF THE INTERIM GOVERNMENT, DATED JUNE 16, 1946<sup>1</sup>

1. His Excellency the Viceroy, in consultation with the members of the Cabinet Mission, has for some time been exploring the possibilities of forming a Coalition Government drawn from the two major parties and certain of the Minorities. The discussions have revealed the difficulties which exist for the two major parties in arriving at any agreed basis for the formation of such a Government.

2. The Viceroy and the Cabinet Mission appreciate these difficulties and the efforts which the two parties have made to meet them. They consider, however, that no useful purpose can be served by further prolonging these discussions. It is indeed urgently

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1. Cmd. 6861.

STATEMENT BY THE CABINET MISSION AND THE VICEROY

necessary that a strong and representative Interim Government should be set up to conduct the very heavy and important business that has to be carried through.

3. The Viceroy is therefore issuing invitations to the following to serve as members of the Interim Government, on the basis that the constitution-making will proceed in accordance with the statement of May 16th:

Sardar Baldev Singh	Nawab Mohammed Ismail Khan
Sir N. P. Engineer	Dr. John Matthai
Mr. Jagjivan Ram	Khwaja Sir Nazimuddin
Pandit Jawaharlal Nehru	Sardar Abdur Rab Nishtar
Mr. M. A. Jinnah	Mr. C. Rajagopalachari
Nawabzada Liaquat Ali Khan	Dr. Rajendra Prasad
	Sardar Vallabhbhai Patel
Mr. H. K. Mahatab	

If any of those invited is unable for personal reasons to accept, the Viceroy will, after consultation, invite some other person in his place.

4. The Viceroy will arrange the distribution of portfolios in consultation with the leaders of the two major parties.

5. The above composition of the Interim Government is in no way to be taken as a precedent for the solution of any other communal question. It is an expedient put forward to solve the present difficulty only, and to obtain the best available Coalition Government.

6. The Viceroy and the Cabinet Mission believe that Indians of all communities desire to arrive at a speedy settlement of this matter so that the process of constitution-making can go forward and that the Government of India may be carried on as efficiently as possible in the meantime.

7. They therefore hope that all parties, especially the two major parties, will accept this proposal so as to overcome the present obstacles and will co-operate for the successful carrying on of the Interim Government. Should this proposal be accepted the Viceroy will aim at inaugurating the new Government about the 20th June.

8. In the event of the two major parties or either of them proving unwilling to join in the setting up of a Coalition Government on the above lines, it is the intention of the Viceroy to proceed with the formation of an Interim Government which will be as representative as possible of those willing to accept the statement of May 16th.



## STATEMENT BY THE CABINET MISSION

Parliament and also to resume their work from which they have been absent for over three months. They therefore propose to leave India on Saturday next, June 29th. In leaving India the members of the Cabinet Mission express their cordial thanks for all the courtesy and consideration which they have received as guests in the country and they most sincerely trust that the steps which have been initiated will lead to a speedy realization of the hopes and wishes of the Indian people.

## PART THREE

### 14

#### MR. K. M. MUNSHI'S OPINION ON EUROPEANS' RIGHT TO VOTE FOR CONSTITUENT ASSEMBLY, JUNE 23, 1946

The following is the text:

- “(a) Whether the Europeans who are foreigners and non-nationals are under the terms of the Cabinet Mission's statement entitled to vote at the election of or,  
(b) Stand as candidates for the election of members for the proposed Constituent Assembly.”

1. The Cabinet Mission came to India for purposes defined in the announcement made in the Parliament by the British Prime Minister on behalf of His Majesty's Government on March 15. The relevant words of the said announcement are as follows:—

“My colleagues are going to India with the intention of using their utmost endeavour to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide. But our desire is to help her to set up forthwith the machinery for making that decision.”

In the said announcement the British Prime Minister expressed a wish that ‘India, her people’ may elect to remain within the British Commonwealth after the new constitution is framed.

2. The word ‘India’ in the said announcement can only be construed as meaning Indians. This is made clear by the statement issued by the Mission on May 16, 1946 (hereinafter referred to as the “statement”). In paragraph 3 it is stated:—

‘We have accordingly decided that immediate arrangements should be made whereby Indians may decide the future constitution of India.’

The said word in paragraph 3 only amplify the intention contained in the British Prime Minister's announcement and indicate that the word ‘India’ used therein refers to Indians as the only persons who will frame the new Constitution.

3. This view is supported by paragraph 24 of the statement which among other things says—

‘We and our Government and countrymen hoped that it would be possible for the Indian People themselves to agree upon the method of framing the new constitution under which they will live.’

In the last portion of the statement the Mission further state, 'We hope in any event that you (Indians) will remain in close and friendly association with our People. But these are matters for your own free choice.'

The British subjects who are in the country as non-national Britishers are clearly included in 'our people' and 'countrymen' and as different from 'they' (Indians) and 'the Indian People'.

4. Paragraph 15 of the statement provides for the machinery for forming the Constituent Assembly and the principles and methods to be followed for election of the members thereof. Sub-clause (B) of the said paragraph provides that the provincial allocation of seats has to be divided between the main communities in each province in proportion to their population. Clause (C) makes a provision that the "representatives allotted to each community in a province shall be elected by the members of that community in its Legislative Assembly." For the purpose of the Constituent Assembly the paragraph recognises three main communities of Indians, namely, the General, Muslim and Sikh. The words "We therefore propose that there shall be elected by each Provincial Legislative Assembly" in paragraph 19(1) mean the same thing as representatives allotted to each of these communities.

5. The general community is deemed to include persons who are neither Muslims, nor Sikhs. It is to consist of Hindus, and other groups of persons referred to therein as "smaller minorities". The word 'smaller' as qualifying the word 'minorities' has been used in contradistinction to Muslims and Sikhs who are classified as major communities of Indians. The word 'community' had to be used for 'minority' for the Muslims and Sikhs only because a new artificial group called general community consisting of the majority, viz., the Hindus and the smaller minorities, has to be formed.

6. The question therefore is whether the European non-nationals are a 'small minority'. The word 'minorities' is used in paragraph 19 sub-clause (IV) and in paragraph 20, both of which deal with the rights of citizens and rights of minorities.

7. The word 'minority' as used in Constitutional treaties, enactments and documents means a group of nationals with distinct interests as against the interests of a larger group of nationals called the majority. But in all cases both such groups are treated as always belonging to the same state, having a common domicile and citizenship. The Treaty of June 28, 1919, by the Allied Powers made with Poland contain provisions relating to minorities which Poland undertook to recognise as fundamental laws. The articles of the Treaty

have since then been recognised as a precedent for minority rights. Article 7 of the said Treaty provides that "all Polish nationals shall be equal before the law" etc. Article 8 provides as follows: 'Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals.' Similar provisions are included in the treaties concluded by the Allies with Czechoslovakia, Rumania, Bulgaria, Turkey, etc. (see M. Wheaton's *International Law*, p. 80). Clearly, therefore, the word 'minorities' used in paragraph 19(iv) and 20 of the statement in connection with rights of citizens and fundamental rights means national minorities.

8. It must not be forgotten that the doctrine of minorities and majorities among the nationals of a country is as old as the 'Federaliser' and after the First World War found expression in the Weimer Constitution of Germany. In considering the rights of the minorities provided in the said peace treaties Mr. William Edward Hall, an eminent jurist on international law, states in his work on *International Law*, that 'too much stress was laid on the rights of minorities while a corresponding duty incumbent by the said minority to co-operate loyally with other fellow citizens was hardly ever stressed'. The learned author at page 64 of his treatise refers to a resolution passed at the Third Assembly of the League of Nations emphasizing the said duty of racial, religious and linguistic minorities in a state (Hall's *International Law*, 8th Edn. p. 64). A minority in the statement, therefore, means a comparatively small group of nationals of the state and not a group of nationals of another state living within the boundaries of the former.

## 15

### ANNOUNCEMENT OF THE PERSONNEL OF THE INTERIM GOVERNMENT, DATED AUGUST 24, 1946<sup>1</sup>

"His Majesty the King has accepted the resignation of the present members of the Governor-General's Executive Council. His Majesty has been pleased to appoint the following:

Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. M. Asaf Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Matthai, Sardar Baldev Singh, Sir Shafaat Ahmed Khan, Mr. Jagjivan Ram, Syed Ali Zaheer and Mr. Cooverji Hormusji Bhabha.

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1. *Indian Annual Register* 1946, II, p. 228

BROADCAST BY THE VICEROY

Two more Muslim members will be appointed later. The Interim Government will take office on September 2.

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BROADCAST BY THE VICEROY, LORD WAVELL, DATED  
AUGUST 24, 1946

I shall implement fully His Majesty's Government's policy of giving the new Government the maximum freedom in the day-to-day administration of the country," said the Viceroy, Lord Wavell, Broadcasting from Delhi Station of the All-India Radio on the 24th August 1946. His Excellency made it clear that the offer made to the Muslim League was still open. The Viceroy said:

You will have heard the announcement of the names of the members of the new Interim Government which will come into office very shortly. You will, I am sure, all realize that a very momentous step forward has been taken on India's road to freedom. Some of you who listen to me may feel, however, that the step should not have been taken in this way or at this time. It is to these that I want principally to address myself tonight.

You who are opposed to the formation of the new Government are not, I assume, opposed to the main policy of His Majesty's Government, namely, to fulfil their pledges by making India free to follow her own destiny. You will also, I think, all agree that we need at once a Government of Indians as representative as possible of political opinion in the country. This is what I set out to secure; but though 5 seats out of 14 were offered to the Muslim League, though assurances were given that the scheme of constitution-making would be worked in accordance with the procedure laid down, and though the new Interim Government is to operate under the existing Constitution, it has not been possible at present to secure a coalition. No one could be sorrier about the failure than I am. No one could be more sure that it is a Coalition Government in which both the main parties are represented that is needed at this moment in the interests of all parties and communities in India. This is a view which I know that the President of the Congress, Pandit Jawaharlal Nehru, and his colleagues hold as strongly as I do. His efforts, like mine, will still be directed to persuading the League to join the Government.

Let me state clearly the offer which has been made and is still open to the Muslim League. They can propose to me five names for



places in a Government of 14, of which 6 will be representatives of the minorities. Provided these names are acceptable to me and approved by His Majesty, they will be included in the Government, which will at once be reformed. The Muslim League need have no fear of being outvoted on any essential issue. A coalition Government can only exist and function on the condition that both main parties to it are satisfied. I will see that the most important portfolios are equitably shared. I sincerely trust that the League will reconsider their policy and decide to participate in the Government.

Meanwhile, however, the administration of India has to go on, and there are large issues which must be decided. I am glad that the representatives of a very large body of political opinion in the country will be my colleagues in carrying on the Government. I welcome them to my Council. I am also glad that the Sikhs have now decided to participate in the Constituent Assembly and in the Interim Government. I have no doubt that their decision is a wise one.

As I have already made clear, I shall implement fully His Majesty's Government's policy of giving the new Government the maximum freedom in the day-to-day administration of the country. In the field of Provincial Autonomy, of course, the Provincial Governments have a very wide sphere of authority in which the Central Government cannot intervene. My new Government will not have any power or indeed any desire to trespass on the field of provincial administration.

The recent terrible occurrences in Calcutta have been a sobering reminder that a much greater measure of toleration is essential if India is to survive the transition to freedom.

I appeal not only to the sober citizens, but also to the young and discontented to recognise that no conceivable good either to themselves or their community or to India can come from violent words or from violent deeds. It is essential that in all Provinces, law and order is maintained, and the protection of the ordinary peaceable citizen is assured with a firm but impartial hand and that no community is oppressed. The Army had to be called in at Calcutta to restore order and rightly so. But I must remind you that to suppress civil disturbances is not the normal duty of the Army, but that of the Provincial Government. The use of the Army is the last recourse only. A general recognition of this basic principle is essential both from the point of view of the civil population and of the Army itself.

I have heard much praise of the discipline and efficiency of the troops employed in Calcutta, and I will here add my own tribute of

admiration to my own service for their behaviour in a duty which is the most exacting and unpleasant on which troops can be employed.

The War Member in the new Government will be an Indian, and this is a change which both the Commander-in-Chief and I warmly welcome. But the constitutional position of the Armed Forces is in no way changed. They still owe allegiance, in accordance with their oath, to the King-Emperor, to whom and to Parliament I am still responsible.

In spite of all immediate appearances I believe there is yet a chance of agreement between the two principal parties. I am quite sure that there is a very large body of opinion in both parties and of non-party men who would welcome such an agreement, and I hope they will all work for it. I would appeal also to the Press to use its very great influence on the side of moderation and compromise. Remember that the Interim Government can be re-formed tomorrow if the League decides to come in. Meanwhile it will administer in the interests of the country as a whole and not of any one party or creed.

*Constituent Assembly:*—It is also essential that the work of the Constituent Assembly should begin as early as possible. I can assure the Muslim League that the procedure laid down in the Statement of May 16 regarding the framing of Provincial and group Constitutions will be faithfully adhered to; that there can be no question of any change in the fundamental principles proposed for the Constituent Assembly in paragraph 15 of the Cabinet Mission's statement of May 16, or of a decision on a main communal issue, without a majority of both major communities; and that the Congress are ready to agree that any dispute of interpretation may be referred to the Federal Court. I sincerely trust that the Muslim League will reconsider their decision not to take part in a plan which promises to give them so wide a field in which to protect the interests and to decide the future of the Muslims of India.

We have come to another critical and solemn issue in the affairs of India. Never were tolerance and soberness in thought and in action more necessary. Never were the wild speaking and rash deeds of a few fraught with greater danger for many. Now is the time for all Indians in any authority, with any influence, to show by their good sense and restraint that they are worthy of their country and that their country is worthy of the freedom it is to receive.

PANDIT NEHRU ON THE CONSTITUENT ASSEMBLY

(Extracts from the first broadcast dated September 7, 1946, as Vice-President of the Interim Government)

There has been much heated argument about Sections and Groupings in the Constituent Assembly. We are perfectly prepared to, and have accepted the position of, sitting in Sections, which will consider the question of formation of Groups. I should like to make it clear on behalf of my colleagues and myself that we do not look upon the Constituent Assembly as an arena for conflict or for the forcible imposition of one view-point over another. That would not be the way to build up a contented and united India. We seek agreed and integrated solutions with the largest measure of goodwill behind them.

We shall go to the Constituent Assembly with the fixed determination of finding a common basis for agreement on all controversial issues. And so, in spite of all that has happened and the hard words that have been said, we have kept the path of co-operation open, and we invite even those who differ from us to enter the Constituent Assembly as equals and partners with us with no binding commitments. It may well be that when we meet and face common tasks our present difficulties will fade away.

STATEMENT OF LORD PETHICK-LAWRENCE, IN THE HOUSE OF LORDS, ON NOVEMBER 17, 1946<sup>1</sup>

The British Government have invited Lord Wavell to come to this country for consultation with regard to the political situation in India and have requested him to invite two representatives of the Indian National Congress, two representatives of the Muslim League and one representative of the Sikh community to accompany him....

The House will be aware that Mr. Jinnah has stated that Muslim League representatives will not attend the Constituent Assembly as set up on the basis proposed by the Cabinet Mission which is due to meet on December 9.

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1. *Indian Annual Register* (1946), II, p. 229 ff.

## CORRESPONDENCE RELATING TO THE LONDON CONFERENCE

This situation is mainly due to differences of view between the Congress and the Muslim League as to the interpretation of certain provisions in the Cabinet Mission's statement of May 16.

The purpose of the proposed discussions is to endeavour to reach a common understanding between the two major parties on the basis of which the work of the Assembly can proceed with the co-operation of all parties.

### 19

## CORRESPONDENCE RELATING TO THE LONDON

### CONFERENCE, NOVEMBER 26-30, 1946

*Letter from Pandit Nehru to Lord Wavell, November 26, 1946*

With reference to our conversation today, in the course of which you conveyed H.M.G.'s invitation to some of us to visit London this week, I have consulted my colleagues and we have given careful thought to the proposal. I need hardly say that we are grateful to H.M.G. for their invitation, but we feel we cannot at this stage go to London. We would be agreeable to consultations with the representatives of the British Government in India.

It would appear that the proposal involves a reopening and a reconsideration of the various decisions arrived at since the visit of the British Cabinet Delegation to India. The Muslim League accepted places in the Government on the very clear understanding that they also accepted the long-term proposals contained in the Cabinet Mission's statement of May 16. Indeed they could not join the Government otherwise. But now the League have announced very definitely that they will not participate in the Constituent Assembly.

We attach, as you are aware, great importance to the holding of the meeting of the Constituent Assembly on the date fixed, namely, December 9. The invitation to us to go to London appears to us to reopen the whole problem which was settled to a large extent by the Cabinet Mission's statement and the formation of the Interim Government. Any impression in the public mind that these decisions are reopened would, in our opinion, be fatal.

It was because we felt that it was necessary in the public interest to emphasise that problems have been finally settled that we

insisted on the holding of the Constituent Assembly on the date fixed for it.

Even this date, it must be remembered, was given months after the election of the members. Any further postponement in the present context would, in all probability, result in the abandonment of the plan and create a feeling of uncertainty all round which is not only undesirable but actually, at the present juncture, would encourage various forms of violent propaganda.

It is difficult enough at this stage for us to leave the country even for a short while. We have also to prepare for the Constituent Assembly meeting which will take place in less than two weeks. If any useful purpose would have been served by our going out now, we should have done so in spite of these difficulties. We are convinced, however, that our leaving India now would mean that at the instance of the League the Cabinet Mission's plan is going to be abandoned or substantially varied and that we are parties to it.

It would mean giving in to the League's intransigence and incitement to violence and this would have disastrous consequences. The first thing to be certain about is that plans agreed to will be implemented and that there will be a continuity about policy. There has been suspicion enough. Any addition to it will wreck the whole scheme and make it difficult to replace it by another.

We feel, therefore, that we cannot at this stage, proceed to London, but we would welcome, whenever necessary, consultations with the representatives of the British Government in India. A brief visit now on our part to England cannot bear fruit. It is likely to have a contrary result.

We, therefore, regret we are unable to accept H.M.G's invitation conveyed to us through you. I trust you will convey the contents of this letter to H.M.G.

*Cable from Mr. Attlee to Pandit Nehru, November 27, 1946*

I very much hope that you will agree to come to London since it is not possible at present time for me or my colleagues who have already been absent more than three months on Indian affairs this year to go to India. The object of our talks would be to try and ensure a successful meeting of the Constituent Assembly on December 9. There is no intention of abandoning either decision of Assembly to meet or plan put forward by Cabinet Delegation.

It is our desire to see that this is implemented in full and not any desire to abandon or alter it that has prompted us to ask you and your colleagues to come to London.

## CORRESPONDENCE RELATING TO THE LONDON CONFERENCE

All three members of Cabinet Delegation individually and collectively have asked me to urge upon you the supreme importance of this opportunity of our meeting and discussing situation before any further untoward actions take place in India.

We ask you to help in this way to make rapid and smooth progress towards the goal of Indian freedom, an objective which we share whole-heartedly with people of India.

*Cable from Pandit Nehru to Mr. Attlee, November 28, 1946*

I am grateful to you for your message and appreciate your desire to ensure a successful meeting of the Constituent Assembly on December 9 and onwards. We are anxious that the Constituent Assembly should meet on the date fixed and should proceed harmoniously to fulfil its task and we shall do our utmost to this end and in co-operation with others.

As we have repeatedly stated, we accept the Cabinet Delegation's plan in its entirety. In regard to certain interpretations we made our position perfectly clear to the Delegation and we have proceeded accordingly since then. We have further stated that in the event of different interpretations the matter should be referred to the Federal Court and we shall abide by Court's decision.

It appears from the statements made on behalf of British Government in Parliament yesterday that the only point to be considered is this interpretation. In regard to this our position is quite clear and we are completely committed to it. We are unable to change it and have no authority to do so. Hence our visiting London for this purpose is not necessary.

The first session of the Constituent Assembly will deal with matters of procedure and appointment of committees. The question of interpretation as regards subsequent activities will not arise at this stage. It is, therefore, easily possible for all to co-operate in this session and, if necessity arises, to refer any matter over which agreement has not been reached to Federal Court.

It would be more suitable and convenient for us to visit London, if necessary, after first brief session of the Constituent Assembly. This would allow more time for consultations.

In view of these considerations and also because of great difficulty in leaving India at present we feel that our visit to London now would serve no useful purpose; but if in spite of this or because you wish to consider other matters you desire us to come, we shall endeavour to do so. But we shall have to return by December 9, in time for the Constituent Assembly.

*Cable from Mr. Attlee to Pandit Nehru, November 28, 1946*

Thank you for your message. I note what you say about position of Congress but nonetheless we feel that a visit by you before Constituent Assembly meets would be of great value and we appreciate your willingness to meet us in this matter. Arrangements will be made to enable you to return by December 9.

*Cable from Mr. Jinnah to Mr. Attlee, November 29, 1946*

Your message to Pandit Nehru without disclosing his communications to you delivered to me at nine tonight (November 29) is new position after we had accepted invitation to go to London. We cannot agree to confine only to matters mentioned in your message to Pandit Nehru in the light of what has already taken place which has created entirely a new situation. Unless it is open to us to discuss whole situation it will be no use my going to London. Please wire clarify position immediately.

*Cable from Mr. Attlee to Mr. Jinnah, November 30, 1946*

I trust that you will come to London. Your refusal must be based on misunderstanding of my telegram to Nehru. There is nothing in it to prejudice full consideration of all points of view.

*Cable from Mr. Jinnah to Mr. Attlee, November 30, 1946*

I thank you for your message, received this morning. After your clarification and assurances I have decided to leave for London tomorrow.

20

INTERPRETATION OF PARAGRAPH 19(V) AND (VIII) OF THE  
CABINET MISSION STATEMENT OF MAY 16, 1946<sup>1</sup>

*Statement by His Majesty's Government, December 6, 1946*

The conversations held by His Majesty's Government with Pandit Jawaharlal Nehru, Mr. M. A. Jinnah, Mr. Liaquat Ali Khan and Sardar Baldev Singh came to an end this evening as Pandit Nehru and Sardar Baldev Singh are returning to India tomorrow morning.

The object of the conversations has been to obtain the participation and co-operation of all parties in the Constituent Assembly.

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1. *Indian Annual Register* 1946, II, p. 301.

## GEOGRAPHICAL DATA

The Geographical information, available from the *Mahābhāṣya*, is not as exhaustive as we find in the *Aṣṭādhyāyī*, nevertheless it is comprehensive enough to give a general idea of the country as known to Patañjali. The *Bhāṣyakāra* mostly refers to places in the *Āryāvarta*, with its well-defined boundaries, but he is not rigid in his treatment. One finds references to the settlements of the *Yavanas*;<sup>1</sup> the *Janapadas* of the North-west—*Gandhāra*, *Kamboja* and *Kaśmīra*; those in the East—*Aṅga*, *Magadha*, *Kaliṅga*, and *Prāgdeśa*; and the *Cholas*, *Pāṇdyas*, and *Keralas* in the South. The land of the *Pañcanadas*, *Sindhu*, *Sauvīra* and *Surāṣṭra* are also mentioned in the *Mahābhāṣya*.<sup>2</sup> He also adduces additional details, and verifies a good many names mentioned in the *Gaṇapāṭha*.<sup>3</sup> The *Cāturārthika Sūtras*—IV. 2. 67-70 of Pāṇini, which explain the significance of names of places where a thing was found, or the place itself was founded by such and such a person or community, or if it was the dwelling-place of such and such a person or community, and lastly, the location of the place as nearer to a known object, are also considered by Patañjali. He does not comment in detail on the *Nivāsa* and *Abhijana Sūtras* <sup>4</sup>formulated by Pāṇini which suggest that the first word in construction must signify a dwelling-place, or where some one's ancestors lived, as well as certain other sūtras of

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1. II. 4. 10 p. 4-5

2. Ref. to be cited separately,

3. Cf. the reference to the complete list of states constituting the *Sālvajanapada*, IV. 1. 168 p. 269; those beginning with the letter *n*, and the verification of the five names in the *Rājanyādi* group IV. 2. 52 p. 282.

4. IV. 3. 89-90 p. 314.



On the matter immediately in dispute, His Majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that a way may be opened for the Muslim League to reconsider their attitude. If in spite of this reaffirmation of the intention of the Cabinet Mission, the Constituent Assembly desires that this fundamental point should be referred for a decision of the Federal Court, such a reference should be made at a very early date. It will then be reasonable that the meetings of the sections of the Constituent Assembly should be postponed until the decision of the Federal Court is known.

There has never been any prospect of success for the Constituent Assembly except upon the basis of the agreed procedure. Should the Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His Majesty's Government could not, of course, contemplate—as the Congress have stated they would not contemplate—forcing such a Constitution upon any unwilling parts of the country.

## 21

### OPTING IN AND OPTING OUT—NOTE BY SIR B. N. RAU<sup>1</sup>

1. **The case of Queensland.**—The following extracts from the "Historical Introduction to the Constitution of the Australian Commonwealth" by Quick and Garran are relevant. In order to understand the extracts it may be of assistance to remember that the Convention, which drafted the Australian Commonwealth Constitution, began its first session in 1897, the idea of such a Convention having been decided upon at a Conference of Premiers in 1895.

#### Extracts

*The Premiers' Conference:* "The Conference of Premiers met at Hobart on 29th January, 1895, the Premiers present being Mr. Reid (New South Wales), Mr. (afterwards Sir) George Turner (Victoria), Mr. (afterwards Sir) Hugh M. Nelson (Queensland), Mr. C. C. Kingston (South Australia), Sir Edward Braddon (Tasmania), and Sir John Forrest (Western Australia). The following resolutions, submitted by Mr. Reid, were carried:—

- (1) That this Conference regards Federation as the great and pressing question of Australasian politics.

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1. *Constitutional Precedent*, First series, 1947. pp. 13-15.

(2) That a Convention, consisting of ten representatives from each colony, directly chosen by the electors, be charged with the duty of framing a Federal Constitution.

(3) That the Constitution so framed be submitted to the electors for acceptance or rejection by a direct vote.

(4) That such Constitution, if accepted by the electors of three or more colonies, be transmitted to the Queen by an Address from the Parliaments of those colonies praying for the necessary legislative enactment.

(5) That a Bill be submitted to the Parliament of each colony for the purpose of giving effect to the foregoing resolutions.

(6) That Messrs. Turner and Kingston be requested to prepare a draft Bill for the consideration of this Conference. (pp. 158-159, *op. cit.*)...

"On 6th February the draft Bill prepared by Mr. Turner and Mr. Kingston was 'considered, amended, and agreed to as the draft of a type of Bill suitable for giving effect to the resolutions of the Conference.' Mr. Reid intimated that 'so soon as practicable after the reassembling of the New South Wales Parliament his Government would introduce a measure providing for the chief objects of the Bill as defined in the draft.' Messrs. Turner, Kingston, Nelson, and Sir Edward Braddon intimated that as soon as New South Wales had passed the Bill they would follow suit—Mr. Nelson, however, reserving the right to dispense with the direct reference to the electors. (p. 159 *op. cit.*)...

"New South Wales having redeemed her pledge and led the way, other colonies were not slow to follow (p. 161 *op. cit.*)...

"Queensland and Western Australia were now being waited for. But Sir Hugh Nelson, the Queensland Premier, had meanwhile discovered difficulties in the way of passing a Bill in the form agreed upon. Queensland was tripartite in interest, the North and the Centre being arrayed against the South in their demand to be erected into separate colonies. This question of separation became interwoven with the question of Federation. The North and the Centre looked forward to Federation, not only for its own sake, but also as a step towards sub-division; whilst Brisbane and the South feared that their trade would suffer from open competition with New South Wales and its metropolis. Each of the three divisions preferred to have separate representation in the Convention rather than to trust to the chances of a single electorate. Moreover, the Government and a large section of the Parliament favoured Parlia-

mentary rather than direct election. Sir Hugh Nelson accordingly provided in his Bill that the Queensland representatives should be elected by the members of the Legislative Assembly, grouped according to the three great districts. The Premiers of the four colonies which had substantially adopted the model Bill joined in a remonstrance against this departure from the Hobart understanding; but without avail. Sir Hugh Nelson proceeded with the Bill, but somewhat half-heartedly, without committing himself to the whole of the process, and reserving to the Parliament the right to send the Constitution to the people or not, as it pleased. He made no profession of being an ardent federalist, but argued that it could do no harm to have a voice in framing the Constitution which they would afterwards be free to accept or reject. On the motion for the second reading, Mr. G. S. Curtis moved an amendment affirming that no enabling Bill would be acceptable which did not provide for the election of representatives by direct popular vote. This was negatived by 36 votes to 26 and the Bill passed the Assembly in July, 1896. But in the Council (i.e., the Upper House) it was not unnaturally claimed that if the election was to be Parliamentary, both Houses should take part in it; and accordingly the Bill was returned to the Assembly amended to that effect. The Assembly, however, denied the representative character of a nominee House. The differences between the Houses proved irreconcilable; and in November—though Mr. Reid journeyed to Brisbane to assist a settlement—the Bill was laid aside.” (p. 162 *op. cit.*)

Thus, Queensland opted out of the convention, so to speak, at the beginning. But the sequel is interesting. The Convention, with representatives from the other States, proceeded with the Constitution-making without Queensland. Then there was another Premiers’ Conference in 1899, after the Constitution had been drafted, for the purpose of considering certain suggestions made by New South Wales. At this Conference Queensland was represented by its new Premier. What happened when the amended draft of the Constitution was sent round to the States for adoption is thus described:

“The real interest now centred in Queensland. The Premier, Mr. Dickson, ably supported by his colleague, Mr. R. Philp, took up the cause with enthusiasm. \* \* \* One difficulty to be faced was that Queensland—though it had been ably represented at the 1891 Convention, whose work was the basis of the draft Constitution now presented—had, through the fault of its politicians, taken no part (except through its Premier, Mr. Dickson, at the Premiers’ Conference) in the actual framing of the Constitution.” Ultimately,

however, in spite of this drawback the amended draft Constitution was accepted by Queensland at a referendum by 38,488 votes against 30,996.

Thus, although Queensland opted out at the beginning and deprived itself of a voice in the making of the Constitution, it opted in at the end with a sense of grievance against those who were responsible for the initial opting out.

**2. The case of Prince Edward Island and Newfoundland.**—“The task of framing the resolutions on which the British North America Act was based—the task so successfully performed at Quebec in October, 1864—was achieved by the thirty-three men who in Canada today are always spoken of with veneration as the Fathers of Confederation.” (Porritt’s “Evolution of the Dominion of Canada”, p. 208.)

“At the Quebec Convention the United Provinces (Quebec and Ontario) were represented by twelve delegates; Nova Scotia by five; New Brunswick by seven; Prince Edward Island by seven; and Newfoundland by two.” (*op. cit.* p. 209.)

“These resolutions (i.e., the Quebec resolutions) having been adopted by the legislature of the United Provinces (Quebec and Ontario), Nova Scotia\*, and New Brunswick\*, they were embodied in the British North America Act which was passed by the Imperial Parliament. And in a foot note, Newfoundland and the Prince Edward Island withdrew from the negotiations after the Quebec conference although Prince Edward Island came into Confederation in 1873.” (*op. cit.* p. 200.)

Owing to the withdrawal of Prince Edward Island and Newfoundland, the British North America Act, 1867, contains two sections providing for their subsequent admission:

Section 146. It shall be lawful for the Queen, by and with the advice of Her Majesty’s Most Honourable Privy Council, on Addresses from the House of the Parliament to Canada, and from the Houses of the respective legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into Union. . . .

Section 147. In case of the admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a

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\* Actually, the Quebec Resolutions were adopted only by the legislature of the United Provinces. They were subsequently adopted, with slight modifications, by the delegates of Nova Scotia and New Brunswick, as well as of the United Provinces to the Westminster Palace Hotel Conference in London and were then embodied in the British North America Act. (See Egerton’s “Federations and Unions in the British Empire”, Introduction pp. 31-33.)

representation, in the Senate of Canada, of Four Members.....”

“In 1873, the Dominion secured a new member by the entrance into it of Prince Edward Island under the terms of the same section of the British North America Act as that which applied to British Columbia. In this case financial exigencies affected what had hitherto proved impossible....In 1895 Newfoundland, under the stress of financial failures, sought to join the Confederation; but the Dominion Ministry was not quick to seize the proffered hand, and the opportunity, once missed, has never recurred.” (Introduction to Egerton’s “Federations and Unions in the British Empire”, p. 38.)

It is clear from these extracts that both Prince Edward Island and Newfoundland participated in the Quebec Convention, which framed the basis of the Canadian Constitution; they subsequently “opted out” and remained outside the Federation; then, owing to financial difficulties, Prince Edward Island “opted in”, but Newfoundland, although at one time desirous of opting in, lost the opportunity and still remains outside the Federation.

## PART FOUR

22

### THE BIRTH OF THE CONSTITUENT ASSEMBLY

(i)

Council House,  
New Delhi the 22nd July 1946.

My dear Abell,

Sir B. N. Rau has been considering the question as to who should be the Provisional Chairman of the Constituent Assembly pending the election of a permanent Chairman. Of the various alternatives possible, he thinks the best would be to appoint the oldest member as the Provisional Chairman. There is precedent for this in the French Constituent Assembly which met in Paris last year; we understand from the French Information Bureau in Delhi that the oldest member presided till a permanent Chairman was elected.

2. Sir B. N. Rau thinks that it might be appropriate if His Excellency consulted the Presidents of the Congress and the League on the above suggestion before making up his mind.

3. We do not know at present the dates of birth of the various candidates who have been elected and are arranging to get this information. In the meanwhile, as a matter of interest, we find that Mr. Jinnah, who is certainly among the top few in point of age, was born on the 25th December 1876 and that Mr. Vallabhbhai Patel was born on the 31st October 1875. The latter, therefore, beats Mr. Jinnah by a head. It is possible, of course, there may be some one who is older than either of these two, but, whoever it is, Sir B. N. Rau thinks there is a great deal to be said in favour of nominating the oldest member as the Provisional Chairman.

4. There are certain other matters connected with the first meeting of the Constituent Assembly which will have to be brought to the notice of His Excellency and about these I will write to you in a day or two.

5. I have sent a copy of this letter to V.P. Menon for information.

H. V. R. Iengar

G.E.B. Abell, Esq., CIE., OBE., ICS., P.S.V.,  
Viceroy's House, New Delhi.

Copy to V.P. Menon, CSI, CIE., Secretary to the Governor-General (Reforms) for information.

sd (H.V.R. Iengar).

(ii)

Council House,  
New Delhi, the 23rd July 1946.

My dear Abell,

We have been considering in this office the arrangements to be made for the preliminary meeting of the Constituent Assembly. The first point, of course, is who should fix the date of the meeting and issue the summons. Our own view was that the most appropriate authority for this purpose would be His Excellency the Viceroy. But, knowing the sensitiveness of at least one party, and in order to avoid any subsequent complications, I took the precaution of calling on Pandit Nehru this morning and asking for his view. He informed me that the matter incidentally came up during his interview with the Viceroy yesterday though I gathered that nothing was settled. Pandit Nehru stated that he would have much preferred some arrangement by which the Assembly could call itself into being *suo motu*, but appreciated that, in the peculiar circumstances of this case, it is inevitable that the initiative should be taken by some external authority. He was opposed to His Excellency the Viceroy summoning the meeting; and after some consideration he informed me that he would have no objection to the following arrangement: His Excellency may, in consultation with the Congress and the League, settle some procedure, which should be automatic in its application, by means of which the Provisional Chairman would be selected. Such a method might be, for instance, the one which I suggested in my D.O. No. 1/46-A dated the 22nd July 1946, namely the oldest member of the Assembly. His Excellency might announce this and at the same time that the Provisional Chairman thus selected would fix the date and issue the summons for the first meeting.

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

2. Sir B. N. Rau does not think that there should be any objection to the above course and recommends it for the consideration of His Excellency. He assumes that His Excellency will consult the leaders of the two parties before making up his mind.

Yours sincerely,

H. V. R. Iengar

G.E.B. Abell, Esq., CIE., OBE., ICS.,  
P.S.V.,  
Viceroy's House, New Delhi.

Copy to S.G.G. (Reforms) (V.P. Menon, CSI., CIE) for information.

(iii)

### *Suggested Programme of Work of the Constituent Assembly for the First Ten Days*

2-9-1946

Members will present credentials and sign register in the presence of the Provisional Chairman. The Chairman will then make a motion suggesting *ad hoc* rules for the election of a Chairman and three Vice-Chairmen. It is suggested that these rules should provide for nominations to be received by noon the next day and for election on the afternoon of the next day.

3-9-1946

Nominations to be received by 12 noon. Afternoon: election of Chairman and Vice-Chairmen. After the election, the Chairman will make a motion suggesting *ad hoc* rules for the election of the following committees:—

- (1) A Committee on Rules of Procedure.
- (2) A Committee on the Order of Business. This may alternatively be called the Steering Committee.
- (3) Finance and Establishment Committee.
- (4) An Advisory Committee on Minorities, Fundamental Rights, etc.
- (5) A Corresponding Committee to negotiate with States.

The *ad hoc* rules may provide for nominations to be received by noon the next day and for election the next afternoon. There is no immediate hurry, however, about Committees (4) and (5). So far as they are concerned, nominations may be received by noon on 6-9-1946.



INDIAN CONSTITUTIONAL DOCUMENTS

4-9-1946

Nominations to Committees (1), (2) and (3) to be received by 12 noon. Afternoon: election of Committees (1), (2) and (3).

5-9-1946

Committee meetings.

6-9-1946

Committee meetings; also receipt of nominations for Committees (4) and (5).

7-9-1946

Election of Committees (4) and (5). Circulation to members of copies of reports of Committees (1), (2) and (3).

8-9-1946—Sunday.

9-9-1946

Discussion of report of Committee (3) and election of office bearers of Assembly. Discussion of reports of Committees (1) and (2). This discussion is unlikely to be over on that day and will most probably have to be carried over to the next day.

10-9-1946

Discussion of reports of Committees (1) and (2) to be continued.

The further order of business will be dependent on the decision of the Assembly on Committee report No. (2).

(iv)

No. 1/46-A  
Council House,  
New Delhi, the 25th July 1946.

In continuation of my D.O. No. 1/46-A of yesterday, here is a further *aide memoire*.

2. A crucial question in the working of the Assembly will be the Order of Business. Under paragraph 19(v) of the Statement dated the 16th May, the Sections shall first settle the Provincial constitutions and, if agreed upon, the Group constitutions, and thereafter, under paragraph 19 (vi), the representatives of the Sections and the Indian States shall settle the Union constitution. It is clear, however, that the Sections cannot settle the Provincial constitutions finally without impinging on the decisions regarding the Union constitution. For example, they could not settle questions regarding powers of taxation without impinging on the powers of

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

the Union Government to raise the finances required for the Union subjects. Moreover, there is bound to be considerable conflict with regard to the precise definitions of the Union subjects which have been described in the Statement in a generalised manner and not in precise constitutional terms.

3. The Congress Expert Committee has given considerable thought to this question. One alternative is to let the Sections proceed with their work on the understanding that the delimitation of subjects and financial powers shall be subject to revision in the light of the subsequent decision of the Assembly on the Union constitution. The other alternative is to define the Union powers precisely before the Provincial representatives divide up into Sections. A third alternative, which Pandit Nehru mentioned to me, is not to settle the Union powers with exactness at the early stage, but to give a directive to the Sections in somewhat generalised terms about the scope of the Union powers. I understand now that it is the intention of the Expert Committee that, at the earliest possible stage in the proceedings of the Constituent Assembly, the whole of this question should be considered in a committee of the Assembly. From talks I have had with three or four members of the Expert Committee, my impression is that the Congress would not be willing to give a completely free hand to the Sections; they would probably give them some directive before the Provincial representatives divide up into three Sections.

4. I do not know the views of the Muslim League on this matter, for Nawabzada Liaquat Ali Khan, whom I met the other day, said that this and other points would be examined by an Expert Committee to be set up by the Muslim League only after their general attitude was decided at the Bombay meeting. We shall naturally endeavour in this office to keep in equally close touch with both the Expert Committees.

H.V.R. Iengar

G.E.B. Abell, Esq., CIE., OBE., ICS.,  
P.S.V.,  
Viceroy's House,  
New Delhi.

Copy to S.G.G. (Reforms) (V. P. Menon, CSI., CIE) for information.

Sd/-

(v)

My dear Abell,

Please refer to your d.o. letter No. 592/79 dated the 25th July relating to the summoning of the Constituent Assembly and the appointment of a provisional Chairman. Iengar had already sent me a copy of his letter to you on the subject.

2. I have considered this matter very carefully. You will see from para. 21 of the Cabinet Delegation's Statement of the 16th May that H.E. was authorised to request the Provincial Legislatures to proceed with the election of their representatives and the States to set up a Negotiating Committee. In para. 19(iii) of the Statement it is laid down that the representatives shall meet at New Delhi as soon as possible. The second step, namely, the summoning of the delegates so elected to meet at New Delhi, follows from the first. I have therefore no hesitation in holding that the right procedure would be for H.E. to issue the necessary invitations to the delegates for this purpose.

3. In his interview with H. E., Nehru mentioned this point, and H.E. said that he presumed that he would issue the invitations. Nehru's suggestion was that this should be done through Speakers of the Provincial Assemblies. I fail to understand what *locus standi* the Speakers of the Assemblies have in this matter.

4. A procedure which involves the summoning of 292 members cannot be evolved *suo motu* and Nehru himself in his conversation with Iengar has recognised that there should be some external authority to do this. In my view the external authority which asked the Legislatures to elect representatives to the Constituent Assembly should be the authority to invite these representatives to meet at New Delhi.

5. The plan which Iengar has suggested is that the oldest member of the Constituent Assembly should be chosen by H.E. after consultation with the Congress and the League as the provisional Chairman. In the Constituent Assembly there are other elements than adherents of the Congress and the League. Even if we ignore these elements, it is not at all impossible that the Congress suggestion may not be acceptable to the League; and what is to be done in the event of disagreement between the Congress and the League on this issue? Further, to find out who is the oldest member we shall have to find out the ages of the 292 members. This will involve references to provincial Governments, and even they may not find it easy to get the information in all cases.

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

6. The purpose of the Statement of May 16th was "to set in motion the machinery whereby a Constitution can be settled by Indians for Indians": and the plan envisaged in the Statement is that H.E. should invite the Provincial Legislatures to elect their representatives and that, when these representatives have been elected, he should invite them to meet at New Delhi. Under this plan the process of election and first assembly would be as automatic as we can make them. I do not think that the question of the procedure for the first meeting should be one more issue for party negotiations. Para. 19(iv) of the Statement says that at the preliminary meeting a Chairman shall be elected by the Constituent Assembly. The question whether it should have a provisional Chairman till a permanent Chairman is elected is also one which should properly be left to the Assembly. In short, once the Constituent Assembly has met, the task of the Cabinet Mission and H.E. the Viceroy would have been accomplished, and thereafter the entire procedure including the selection of a provisional Chairman, if necessary, would be for the Assembly itself to decide.

7. In view of the fact that this matter has been raised by Nehru, I think H.E. may wish to apprise the Secretary of State of the advice which he has received. Thereafter both Jinnah and Nehru can be informed of the course which H.E. proposes to adopt.

8. I have discussed this matter with the Law Member and have shown this letter to him. He entirely accepts it.

G. E. B. Abell, Esq., C.I.E., O.B.E., I.C.S. Yours sincerely,  
V. P. Menon

(vi)

No.1/46-A  
Council House,  
New Delhi, the 24th July 1946.

My dear Abell,

With reference to our conversation of yesterday, and in continuation of my D.O. No. 1/46-A of yesterday, here is a further *aide memoire*. I explained to Pandit Nehru the arrangements that we are making, subject to the approval of the Constituent Assembly, for the staffing of the Secretariat. While I was telling him that we were proposing to appoint Secretaries for the Sections, in consultation with the Provincial Governments concerned, and also, in the case of Group B, with the Provincial Muslim League, it became clear that I had touched a point which is likely to raise considerable difficulty. Pandit Nehru made three points. First of all, he said that the head of the Secretariat organisation would be a Secretary.

General probably elected from among the members of the Constituent Assembly. Secondly, the whole of the Secretariat would be one organic unit under the control of the Secretary-General, subject to the orders of the Chairman. He agreed that there would have to be Secretaries for the Sections, but maintained that it was important that these Secretaries should not be independent of the main office but should form part of it and be under the control of the Secretary-General. The Sectional Secretaries would doubtless be appointed in consultation with the Sections, but it will, in his opinion, be a serious mistake to give them a status independent of the main office. Thirdly, he was strongly opposed to our notifying any appointments, at this stage, in terms either of the Constituent Assembly or of the Sections. He admitted that some staff was immediately necessary for the purpose of arranging for the first meeting and of collecting information that would be required by the Assembly, but suggested that this should be the minimum that is required and should not, at this stage, be given specific designations in terms of the Assembly Secretariat. Pandit Nehru's views had previously been expressed to me equally strongly by Mr. K. M. Munshi, a member of the Congress Expert Committee with whom I had had a discussion two or three days ago.

2. I mentioned our arrangements, two days ago, to Nawabzada Liaquat Ali Khan; and, although he did not express himself definitely on this subject, I got the impression that the Muslim League would also not be in favour, at this stage, of making more appointments than are absolutely necessary.

3. I have discussed this matter with Sir B. N. Rau; and without going into the merits of Pandit Nehru's main contention which is likely to be highly controversial, he thinks that the best thing would be, at this stage, to restrict the number of appointments to those he considers the minimum necessary and refrain from notifying them in the Gazette. Officers appointed may be regarded as attached to the Office of the Constitutional Advisor. The appointments which he considers essential at this stage, in addition to my own, are a Joint Secretary to help him in his constitutional work—a post for which Sundaram would be required—a Deputy Secretary for which post we have suggested Tyabji, and an Under Secretary for which post we have decided to appoint Khan Bahadur Hasnain who recently retired from the Legislative Assembly Office.

Yours sincerely,

Sd/-

H. V. R. Iengar

G.E.B. Abell, Esq., CIE., OBE., ICS.,  
PSV., Viceroy's House, New Delhi.

THE BIRTH OF THE CONSTITUENT ASSEMBLY

(vii)

The Viceroy's House,  
New Delhi.

27th July 1946.

My dear Menon,

At one time we thought that H.E. might deliver an opening address to the Constituent Assembly. It now seems that this might be contrary to the feelings of at least one party and the Congress might absent themselves as they did when H.E. addressed the Legislative Assembly.

2. If there is feeling against H.E. even summoning the Assembly, there will presumably be more feeling against his addressing it. He might however perhaps send a message, or perhaps better still, broadcast a day or two before the beginning of the session giving a message of Godspeed to the Constituent Assembly.

3. I should be grateful for your advice in consultation with Sir B. N. Rau and Iengar.

Yours sincerely,  
G. E. B. Abell

V. P. Menon, CSI., CIE.

(viii)

New Delhi, 29th July 1946.

My dear Abell,

Please refer to your D.O. No. 592/79 of the 27th July.

2. For the reasons mentioned in paras. 1 and 2 of your letter I would not advise that H.E. should address the Constituent Assembly personally; and I agree that the best course would be for H.E. to give a broadcast on the evening previous to the meeting of the Constituent Assembly wishing it Godspeed and all success. I have discussed with Rau and Iengar who agree with me.

3. All this is of course on the assumption that our arrangements go according to plan: today's decision of the Muslim League Council has thrown the whole thing again into the melting pot.

Yours sincerely,  
V. P. Menon

G.E.B. Abell, Esq., CIE, OBE.

(ix)

From—Viceroy.  
To—Secretary of State.  
No.—1573-S.  
Dated 29th July 1946.

When I last saw Nehru on 22nd July he asked how summonses to the Constituent Assembly would be issued. I said that I should issue them. He thought they should be issued through Speakers of Assemblies. In subsequent discussion with official Secretary for Constituent Assembly Nehru said that while he would have preferred some arrangement by which the Assembly would call itself into being *suo motu* he appreciated that this would be difficult. He said he would have no objection to a procedure being settled which would be automatic in its application and by means of which Provisional Chairman could be selected e.g. according to precedent of French Constituent Assembly of 1945 oldest member should preside till election of permanent Chairman.

2. In para. 21 of Statement of 16th May Viceroy was authorised to request Provincial Legislatures to proceed with elections of representatives. In para. 19(iii) it is laid down that representatives shall meet at New Delhi as soon as possible. The second step follows from the first and I am sure that it is for the Viceroy to issue the necessary invitations, and there must be no doubt that it is on the basis of the Statement of 16th May that the Constituent Assembly is being summoned.

3. I am also advised that the best course would be for Constituent Assembly to elect its own Provisional Chairman when it meets. Any nomination by Viceroy of an individual, or even decision to make oldest member Provisional Chairman, might be contested with unfortunate results.

4. I propose to proceed as in paras. 2 and 3 above. Do you see any objection?

(Copy sent to V.P. Menon)

(x)

Telegram

From—Secretary of State.  
To—Viceroy.

14259 Dt. 3rd recd. 4th August 1946 (T00-1305) (TOR-9730).

Your telegram No. 1573-S of July 29th. Summoning of Constituent Assembly. I agree with course you propose to adopt.

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

2. Assuming that Muslim League representatives in fact attend, it seems very necessary that Nehru and Jinnah should come to some prior arrangement as to who is to be chosen Provisional Chairman. Unless Provisional Chairman is chosen by election at the outset some one will be needed to conduct the proceedings during election of Provisional Chairman and this will present a difficulty. Suggestion that oldest member takes the Chair provisionally seems a very reasonable basis for such agreement but may it not be worth while suggesting to Nehru and Jinnah possibly through Rau that previous arrangement on this point is necessary?

3. I presume invitations to attend will actually be signed by Secretary of Constituent Assembly acting on your instructions. This might meet Nehru to some extent.

(xi)

Office of the Constitutional Adviser,

Council House,

New Delhi, the 5th August 1946.

After the Council of the All India Muslim League passed their resolution of the 29th July, Sir B. N. Rau thought that it would be of advantage to find out what the Congress and the League felt regarding the arrangements for summoning the Constituent Assembly in the first week of September.

2. I had already seen Pandit Nehru who had expressed the view that it would be a serious mistake to postpone the meeting of the Constituent Assembly. Nevertheless, Sir B. N. Rau thought that it would be of advantage if I ascertained the reaction of another prominent member of the Congress Working Committee. Accordingly, I went down to Bombay to see Mr. Vallabhbhai Patel and, in the meanwhile, Sir B. N. Rau himself saw Mr. Liaquat Ali Khan.

3. Mr. Vallabhbhai Patel expressed the same view as Pandit Nehru did, but even in more emphatic terms. He said it would be disastrous if the Constituent Assembly did not meet as already arranged. That, in his opinion, would be giving an additional fillip to the Muslim League. He appreciated that one of the fundamental points in the Statement issued by the Cabinet Delegation and the Viceroy about the framework of the proposed constitution, namely the dividing into Sections, would be seriously affected by the absence of the League members who form the overwhelming majority of Muslims in Sections B. & C. Nevertheless, he maintained



that the Constituent Assembly must meet and decide how it should proceed with its work.

4. In view of the fact that this view has been expressed independently both by Pandit Nehru and Mr. Vallabhbhai Patel, we may take it that this represents the view of the large majority of Congressmen.

5. In his conversation with Sir B. N. Rau, Mr. Liaquat Ali Khan said that the decision of the Muslim League meant that the League members would not attend the meeting of the Constituent Assembly. His solution to the problem was that there should be two separate Constituent Assemblies framing constitutions for two separate States and for the two Assemblies to meet subsequently to decide on common arrangements for subjects of mutual interest, in other words, the original League proposals for Pakistan.

6. If the Constituent Assembly is to meet on the 2nd of September, there is a great deal of work to be done; and, in the absence of instructions to the contrary, we are going ahead with the arrangements on that basis.

Sd/-  
H.V.R. Iengar

G.E.B. Abell, Esq., CIE., OBE., ICS.,  
P.S.V.,  
Viceroy's House,  
New Delhi.

Copy to V. P. Menon, CSI., CIE., for information.

(xii)

New Delhi, 6th August 1946.

My dear Abell,

Please refer to your endorsement No. 1970-S dated the 4th instant forwarding the Secretary of State's telegram No. 14259 dated the 3rd August relating to the procedure for the summoning of the Constituent Assembly. Since the Secretary of State's telegram was received it has become clear that the League members will not attend the meeting of the Constituent Assembly. It would therefore appear that no useful purpose will be served by H. E. consulting Jinnah on this matter. The suggestion contained in H.E.'s telegram to the Secretary of State may therefore be discussed by H. E. with Nehru alone at his next meeting. I would however draw attention in this connection to my letter of today

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

in which I have suggested that H. E. might pursue with Nehru the question of postponing the meeting of the Constituent Assembly pending further negotiations by the Congress with the League.

2. If the Congress insist on the Assembly being summoned without further negotiations with the League, I think H. E. should state that the Assembly should be summoned under his instructions by the Secretary of the Assembly, that he would not himself nominate anybody for the provisional chairmanship of the Assembly but that the Assembly, when it meets, can either elect its permanent Chairman straightway or elect a provisional Chairman. In the case of the latter, the procedure adopted in the French Constituent Assembly may be mentioned, namely, to elect the oldest member of the Assembly as the provisional Chairman.

Yours sincerely,  
V. P. Menon

G.E.B. Abell, Esq., CIE., OBE.

(xiii)

New Delhi, 6th August 1946.

My dear George,

In his d.o. letter of the 5th August Iengar has stated that in the absence of instructions to the contrary he is proceeding on the assumption that the Constituent Assembly will meet in the first week of September. In view of the fact that the Muslim League will not participate in this meeting it is necessary to consider whether it would be sound public policy for the Assembly to meet so early and whether we should not take up with the Congress the question of postponing the meeting for a time to enable the two main parties to consider the matter more fully in the light of altered circumstances.

2. The Congress leaders themselves seem to appreciate that in the absence of the League members the proceedings, particularly in Sections B and C, will be unrealistic. Their anxiety to meet in September appears to be dictated solely by their desire that a further scoring point should not be given to the League. If, however, steps are taken in the meantime to assure the Congress that the intransigence of one party will not hold up all progress they may themselves be agreeable to some postponement.

3. The latest offer to the Congress to submit proposals for the formation of an Interim Government does constitute the strongest possible demonstration of H.E.'s anxiety that the League resolution should not hold up all progress. In these circumstances

it would seem worth consideration for H.E. during his next talk with the President of the Congress to suggest to him that a further effort should be made by the Congress to persuade the Muslim League to come into the Constituent Assembly on the basis of the Cabinet Delegation's statement. Whether such an effort will meet with success or not is open to some doubt, but it seems to me clear that it should be made, and every effort made to persuade the Congress in that direction. In fact, I feel considerable uneasiness at the prospect of the Constituent Assembly meeting without some such effort on the part of the Congress.

Yours sincerely,

V. P. Menon

G.E.B. Abell, Esq., CIE., OBE.

(xiv)

The Viceroy's House,  
New Delhi.

7th August 1946.

My dear Menon,

Thank you for your d.o. of the 6th August about the method of summoning the Constituent Assembly. I understood from you that you thought the notices ought to be signed by me. You now suggest that they should be signed by the Secretary of the Constituent Assembly under the Viceroy's instructions. Are you sure this is a suitable alternative? The Secretary of the Constituent Assembly will be a servant of the Assembly and though, before the Assembly meets, he is inevitably under the control of the Viceroy I rather doubt whether it would be suitable for him to send out the invitations by order of the Viceroy. If however you have come to the conclusion that this is the best course, would you please let me know the reasons for H.E.'s information, and also suggest a draft of the notice?

Yours sincerely,

G.E.B. Abell

V. P. Menon, CSI, CIE.

(xv)

New Delhi, 9th August 1946.

My dear Abell,

Please refer to your letter No. 592/79 dated the 7th August about the method of summoning the Constituent Assembly. My own original idea was that the invitations should be signed by you

## THE BIRTH OF THE CONSTITUENT ASSEMBLY

on behalf of H.E. You will however notice that the Secretary of State has suggested that the invitations could be signed by the Secretary of the Constituent Assembly acting on H.E.'s instructions and that he has put this suggestion forward as a step by which we might meet Nehru to some extent. Until the first meeting of the Constituent Assembly, at least, the Constitutional Adviser and his Secretariat must remain responsible to H.E. the Viceroy and must be considered to be subordinate to him. On this argument I thought there would be no objection to our accepting the Secretary of State's suggestion in this matter.

I enclose a draft invitation to members of the Constituent Assembly. I have shown the papers and this draft to Sir George Spence who agrees.

Yours sincerely,  
V. P. Menon

G.E.B. Abell, Esq., CIE., OBE.

### Draft Invitation

In pursuance of paragraph 21 of the Statement made by the Cabinet Delegation and His Excellency the Viceroy on the 16th May 1946, the Provincial Legislative Assemblies have elected their representatives to the Constituent Assembly. I am now, under H.E.'s instructions, to request you as a member of the Constituent Assembly to attend its first meeting which will be held at \_\_\_\_\_ a.m. on \_\_\_\_\_ September 1946 at the Constituent Assembly Chamber in the Council House, New Delhi.

(xvi)

The Viceroy's House,  
New Delhi.  
10th August 1946.

My dear Menon,

Thank you for your letter of the 9th August about the method of summoning the Constituent Assembly. H.E. agrees to the draft invitation and agrees that it should be issued by the Secretary of the Constituent Assembly.

2. I take it that Sir B. N. Rau also accepts this draft; if he has any comments please let me know, and if necessary I will put them to H.E.

3. There is of course no question of issuing the invitations at present. I discussed this with Sir B. N. Rau yesterday, and he entirely agrees that we must postpone action for the time being.

Yours sincerely,

G.E.B. Abell

V. P. Menon, CSI, CIE.<sup>1</sup>

## 23

### RECOMMENDATIONS OF THE EXPERTS COMMITTEE DRAFTED AT ITS MEETINGS HELD ON 20, 21 AND 22 JULY 1946<sup>2</sup>

#### *Election of Chairman.*

1. *Temporary Chairman.* A temporary Chairman for the opening meeting should be settled by agreement and, as soon as the Assembly meets, he should be proposed and seconded and accepted by acclamation.

2. *Permanent Chairman.* The following Resolution should be moved in relation to the election of the permanent Chairman as soon as the temporary Chairman takes his seat—

The Assembly hereby resolves that the Chairman be elected in the following manner:—

- (a) Any member may be nominated as a candidate by being proposed by one of the members in writing and seconded by another member.
- (b) The Temporary Chairman shall fix the time for receipt of nominations. If only one member is nominated, he shall be declared elected and shall immediately proceed to occupy the chair.
- (c) If there is more than one nomination, the Temporary Chairman shall fix the time of election. Each member shall have one vote and the voting shall be by poll. If there are only two candidates, the candidate securing the larger number of votes shall be declared elected. If there are more than two candidates, and one of them gets a majority of votes polled, he shall be declared elected. If there is no such person, the candidate getting the least number of votes shall be eliminated and the voting shall take place among the

1. Documents nos. 22 (i) to 22 (xvi) are from the papers of late Mr. V. P. Menon.

2. The following were the members of the Experts Committee appointed by Pandit Jawaharlal Nehru as the President of the Congress on July 11, 1946: N. Gopalaswamy Aiyangar, K. M. Munshi, K. T. Shah, K. Santhanam, D. R. Gadgil, H. Kabir, and Asaf Ali.

## RECOMMENDATIONS OF THE EXPERTS COMMITTEE

remaining candidates. This process shall be repeated until one of the candidates gets a majority of the votes or only two candidates are left in which case the person getting the larger number of votes shall be declared elected. The Acting Chairman is authorised to take all steps necessary to carry this resolution into effect.

### *Procedure Committee.*

3. After the Chairman has been elected the following resolution should be moved—

- (1) This Assembly resolves to appoint a Committee of 15 members to report within 3 days on the following matters:—
  - (a) Rules of Procedure of the Assembly, Sections and Committees;
  - (b) Powers of the Chairman;
  - (c) Organisation of the work of the Assembly including the appointment and powers of office bearers—other than Chairman;
  - (d) Procedure for the declaration and filling up of vacancies in the Assembly; and
  - (e) Other incidental matters.
- (2) The Chairman shall be an ex-officio member and Chairman of the .....
- (3) The Chairman is authorised to call for nominations and if more persons than 15 are nominated, to arrange for the election of the Committees by the principle of the single transferable vote.

### *Advisory Committee on Fundamental Rights, Protection of Minorities and Administration of Tribal and Excluded Areas.*

4. The Advisory Committee for fundamental rights, protection of minorities and administration of tribal and excluded areas is to consist of 45 persons, including members and non-members. It should be divided into three sections, one section each to report on (1) fundamental rights, (2) protection of minorities and (3) administration of tribal and excluded areas. The whole Committee will consider all the reports and present a consolidated report to the Assembly. The Committee will be asked to complete its work in 2 months.

### *Declaration of objective.*

5. The following resolution outlining the main objectives of the Constituent Assembly should be moved after the appointment of the Advisory Committee on Fundamental Rights:—

*Declaration*

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent sovereign Republic, and to draw up for her future governance a constitution wherein

the territories that now comprise British India, the territories that now form the Indian States, and such other territories and parts of India as are outside British India and the States,—and are willing to be constituted into the Independent Sovereign India—shall be a Union of them all; and the said territories, either with their present boundaries or with such others as may be determined by the Constituent Assembly, and thereafter, according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise the functions and powers of government and administration, save and except those that are assigned to and vested in the Union, and save and except such powers and functions as are inherent in the Union by virtue of the sovereignty of the Union; and wherein

all power and authority of the Sovereign Independent India, its constituent parts, and organs of Government are derived from the people; and wherein

shall be guaranteed to all the people of India by law, and secured to them by declared social objectives and purposes, economic organisation and administrative machinery

- (a) justice, social, economic and political,
- (b) equality of status, of opportunity, and before the law,
- (c) freedom of thought, belief, vocation, association and action  
subject to law and public morality; and wherein

adequate safeguards shall be provided for minorities, backward areas and classes; and whereby

shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and

this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

*Functions of the Union Legislature.*

6. The following resolution relating to the subjects falling within the jurisdiction of the Union Legislature should be moved with a view to enable the delimitation of the functions of the Provincial Governments.

## RECOMMENDATIONS OF THE EXPERTS COMMITTEE

Whereas:

In paragraph 15(1) of the Cabinet Delegation's Statement of May 16th, the subjects assigned to the Union Centre are compendiously indicated under four broad categories, and it is necessary for the purpose of eliminating possibilities of overlapping and conflict between the provisions in the constitution relating to the Union and the Provinces that lists of matters covered by each of the four categories and matters incidental thereto should be drawn up before the framing of the provincial constitutions is taken up for consideration, And whereas:

It is necessary to indicate the matters which are inherent in the powers of the Union or are incidental to their implementation, And whereas:

It may by general agreement be considered necessary or desirable that certain subjects other than those referred to in the preceding paragraphs should be assigned to the Union,

This Assembly resolves that a committee consisting of fifteen (15) members be appointed for the purpose of preparing lists of subjects and matters referred to in the foregoing paragraphs, and that the committee do report to this Assembly within two weeks.



## PART FIVE

24

### ELECTION OF TEMPORARY CHAIRMAN<sup>1</sup>

The first meeting of the Constituent Assembly of India took place in Constitution Hall, New Delhi, on Monday, the 9th December 1946, at Eleven of the clock.

**Acharya J. B. Kripalani** (*United Provinces: General*): in requesting Dr. Sachchidananda Sinha to take the Chair as temporary Chairman, said:<sup>2</sup>

“Friends, at this auspicious occasion of historical importance I invite, on your behalf, Dr. Sachchidananda Sinha to be the temporary Chairman of this Assembly. Dr. Sinha needs no introduction. You all know him. He is not only the oldest among us but also the oldest parliamentarian in India, having served, as you know, as a member of the Imperial Legislative Council from 1910 to 1920. He entered the Central Legislative Assembly in 1921 not only as one of its members, but its Deputy President also. He was then entrusted with the portfolio of an Executive Councillor and Finance Member of the Government of Bihar and Orissa. So far as I remember Dr. Sinha was the first Indian who was ever appointed as a Finance Member of a Province. He has a particular taste for education having been Vice-Chancellor of the Patna University for eight years. Over and above all this, Dr. Sinha is the oldest Congressman among us. Up till 1920 he was a member of the Congress, being at one time its Secretary.

“After the year 1920 when we started on a new way to gain freedom he parted company with us. He, however, never wholly left us. He has always been helping us. He never joined any other organization and his sympathies were ever with us. Such a person is entitled to be the temporary Chairman of this Assembly. His work is brief but it is all the same most important. It is inaugurating the proceedings of this House. As we begin every work with Divine blessings we request Dr. Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, on your behalf call upon Dr. Sinha to take the Chair.”

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1. *Constituent Assembly Debates*, I. (9-12-1946), p. 1.

2. English translation of Hindustani speech. *Ibid.*, p. 1.

Acharya J. B. Kripalani then conducted Dr. Sachchidananda Sinha to the Chair, which he then occupied amidst acclamation.

INAUGURAL ADDRESS BY THE CHAIRMAN, DR. S. SINHA<sup>1</sup>

Hon'ble Members of the first Indian Constituent Assembly, I am deeply beholden to you for your having agreed to accept me as the first President of your Constituent Assembly, which will enable me to assist you in transacting the preliminary business before the House—such as the election of a permanent President, the framing of the Rules of Business, the appointment of various Committees, and settling the question of giving publicity to, or keeping confidential, your proceedings which will ultimately lead you to crown your labours by formulating a suitable and stable constitution for an Independent India. In expressing my sense of appreciation of your great kindness, I cannot conceal from myself that I feel, comparing small things with great, that I am, on the present occasion in the position in which Lord Palmerston found himself when Queen Victoria offered him the highest Order of Chivalry, namely, the Knighthood of the Garter. In accepting the Queen's offer, Lord Palmerston wrote to a friend as follows:—

“I have gratefully accepted Her Majesty's gracious offer as, thank God, there is no question of any damned merit about the honour conferred on me.”

I say I find myself more or less in the same position, for you have agreed to accept me as your President on the sole ground that I am, in age, the seniormost member of this Assembly. Whatever the ground, however, on which you have chosen to have me as your first President, I am nonetheless profoundly grateful to you. I have had, in my fairly long life, several honours conferred on me in recognition of my services as a humble worker in public interest, but I assure you that I regard your mark of favour as a signal honour, which I shall cherish throughout the rest of my life.

On this historic and memorable occasion, you will not grudge, I am sure, if I venture to address to you some observations on certain aspects of what is called a Constituent Assembly. This political method of devising a Constitution for a country has not been known to our fellow-subjects in Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law,

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1. *Ibid*, pp. 2-7.

it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian constitution-makers, and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilise it to the best advantage in the interest of preparing a suitable constitution for a free and independent India.

The only other State in Europe, to the constitution of which we could turn with some advantage, is that of France, the first Constituent Assembly of which (called "The French National Assembly") was convoked in 1789, after the French Revolution had succeeded in over-throwing the French monarch. But the French Republican system of Government had been changed since then, from time to time, and is even now, more or less, in the melting pot. Though, therefore, you may not be able to derive as much advantage from a study of the French system of constituent law as that of the Swiss, that is no reason why you should not seek to derive what advantage you can in the preparation of the task before you, by a study of it.

As a matter of fact, the French constitution-makers who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

I have referred above to the self-governing constitutions of the great Dominions of the British Commonwealth being based on, to a large extent, if not actually derived from, the American constitutional system. The first to benefit by the American system was Canada, the historic Convention of which country, for drawing up a self-governing constitution, met in 1864, at Quebec. This Convention drew up the Canadian Constitution, which was subsequently embodied in what is still on the Statute Book as the British North American Act, passed by the British Parliament in 1867. You may be interested to hear that the Quebec Convention consisted of only 33 delegates from all the provinces of Canada, and that Convention of 33 representatives issued as many as 74 resolutions, which were afterwards duly incorporated *in toto* in the British North American Act, under the provisions of which the first self-governing Dominion of the British Commonwealth of Canada, came into existence, in 1867. The British Parliament accepted the Canadian Convention's scheme in its entirety, except for making only one drafting amendment. I hope and pray, Hon'ble members, that your labours may be crowned with a similar success.

The American constitutional system was more or less adopted in the schemes prepared for framing the Constitutions of Australia and South Africa, which shows that the results achieved by the American Convention, held at Philadelphia in 1787, had been accepted by the world as a model for framing independent federal constitutions for various countries. It is for these reasons that I have felt justified in inviting your attention to the American system of constituent and constitutional law as one which should be carefully studied by you—not necessarily for wholesale adoption, but for the judicious adaptation of its provisions to the necessities and requirements of your own country, with such modifications as may be necessary or essential owing to the peculiar conditions of our social, economic and political life. I have done so as according to Munro—a standard authority on the subject—the American Constitution is based on “a series of agreements as well as a series of compromises”. I may venture to add, as a result of my long experience of public life for now nearly half a century, that reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India.

In commending to you for your careful consideration and acceptance, with reasonable agreements and judicious compromises, the fundamental principles of the American system, I cannot do better than quote the striking observations on the subject of the greatest British authority, namely Viscount Bryce, who in his monu-

mental work, called "The American Commonwealth", writes as follows, putting in a very few lines the substance of the fundamental principles of the American Constitution:

"Its central or national government is not a mere league, for it does not wholly depend on the component communities which we call the States. It is itself a Commonwealth, as well as a union of common-wealths because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive officers. Still less are the minor communities, the States, mere subdivisions of the Union, mere creatures of the National Government like the counties of England, or the Departments of France. They have over their citizens an authority which is their own, and not delegated by the Central Government".

It may be possible that in some such scheme, skilfully adapted to our own requirements, a satisfactory solution may be found for a constitution for an Independent India, which may satisfy the reasonable expectations and legitimate aspirations of almost all the leading political parties in the country. Having quoted the greatest British authority on the great inherent merits of the American Constitution, you will, I hope, bear with me a fairly long quotation from the greatest American Jurist, Joseph Story. In concluding his celebrated book, called "Commentaries on the Constitution of the United States", he made certain striking and inspiring observations which I present to you as worthy of your attention. Said Story:

"Let the American youth never forget, that they possess (in their constitution) a noble inheritance, brought by the toils and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence, of its only keepers, THE PEOPLE. Republics are created—*these are the words which I commend to you for your consideration*—by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligates are rewarded, because they flatter the people, in order to betray them".

## INAUGURAL ADDRESS BY THE CHAIRMAN

To quote yet one more leading authority on the almost ideal Constitution of America, James (at one time Solicitor-General of the United States) says in his highly instructive book, called "The Constitution of the United States—Yesterday, Today and Tomorrow":—

"Constitutions, as a governmental panacea, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time which has washed away the dissoluble fabric of many other paper constitutions, has left almost untouched its adamantine strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?"

Hon'ble Members, my prayer is that the Constitution that you are going to plan may similarly be rare for 'immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength', which will outlast and overcome all present and future destructive forces.

Having invited your attention to some aspects of the question of constitution-making in Europe and America, I may now profitably turn to some aspects of the question in our own country. The first definite reference to a Constituent Assembly (though not under those words or under that particular name) I have found in a statement of Mahatma Gandhi, made so far back as 1922. Mahatmaji wrote:

"Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives."

The demand made by Mahatma Gandhi for a Constituent Assembly, composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders; but it was not till May 1934, that the Swaraj Party, which was then formed at Ranchi (in Bihar), formulated a scheme in which the following resolution was included:

"This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a

Constituent Assembly representative of all sections of the Indian people, to frame an acceptable constitution."

The policy embodied in this resolution was approved by the All-India Congress Committee, which met at Patna—the capital of Bihar—a few days later, in May, 1934; and it was thus that the scheme of a Constituent Assembly for framing the Indian Constitution was officially adopted by the Indian National Congress.

The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared:

"The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country".

In November, 1939, the Congress Working Committee adopted a resolution which declared:

"Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential."

I may add that in the resolutions from which I have quoted above (those adopted at the Congress Working Committee of November 1939, and at the Faizpur session of the Congress of 1936) it was declared that the Constituent Assembly should be elected on the basis of adult suffrage. Since the Congress gave a lead on the subject in 1934, the idea of a Constituent Assembly had come to prevail largely as an article of faith in almost all the politically-minded classes in the country.

But until the adoption of the resolution on Pakistan, in March 1940, by the Muslim League, that political organization had not favoured the idea of a Constituent Assembly as a proper and suitable method for framing a constitution for this country. After the adoption of that resolution, however, the attitude of the Muslim League seems to have undergone a change in favour of the idea of a Constituent Assembly, one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus it may be stated that the idea of a Constituent Assembly, as the only direct means for the framing of a constitution in this country, came to be entertained and accepted by the two major political parties in 1940, with this difference that while the Congress desired one Constituent Assembly for India as a whole, the Muslim League wanted



two Constituent Assemblies, in accordance with its demand for two separate states in the country. Anyway, whether one or two, the idea of a Constituent Assembly being the proper method for the framing of a constitution had clearly dawned by that time on public consciousness in the country, and it was with reference to that great mental upheaval that Pandit Jawaharlal Nehru declared that "it means a nation on the move, fashioning for itself a new Government of its own making, through their elected representatives".

It remains to add that the conception of a Constituent Assembly as the most appropriate method for framing the constitution of India had also found favour with the members of the Sapru Committee in the report of which, issued last year (1945), is formulated a definite scheme for the composition of a Constituent Assembly. We are meeting, however, in this Assembly today, under the scheme propounded by the British Cabinet Mission, which, though differing from the suggestions made on the subject by the Congress, the League, and other political organizations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically-minded classes in the country, but also by those not belonging to any political party, as one well worth giving a trial, with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's scheme as that might lead me to trespass on controversial ground, which I have no desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission, have been the subject of acute controversies between some of the political parties amongst us, and I do not want, therefore, to rush in where even political angels might well fear to tread.

Hon'ble Members, I fear I have trespassed long on your patience, and should now bring my remarks to a close. My only justification for having detained you so long is the uniqueness of this great and memorable occasion in the history of India, the enthusiasm with which this Constituent Assembly had been welcomed by large classes of people in this country, the keen interest which matters relating to it had evoked amongst various communities and the prospect which it holds out for the final settlement of the problem of all problems, and the issue of all issues, namely the political independence of India, and her economic freedom. I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and



above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the nations of the world. Let us not forget to justify the pride of the great Indian poet, Iqbal, and his faith in the immortality of the destiny of our great, historic and ancient country, when he summed up in these beautiful lines:

*Yunan-o-Misr-o-Roma sab mit gaya jahan se,  
Baqi abhi tak hai nam-o-nishan hamara,  
Kuch bat hai ke hasti mit-ti nahin hamari,  
Sadion raha hai dushman daur-e-zaman hamara.*

It means: "Greece, Egypt, and Rome, have all disappeared from the surface of the Earth; but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration. In spite of the fact that the heavens themselves had rolled and revolved for centuries, and centuries, in a spirit of hostility and enmity towards us." I particularly ask you to bring to your task a broad and catholic vision, for as the Bible justly teaches:

"Where there is no vision the people perish." (*Applause.*)

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### APPOINTMENT OF THE COMMITTEE ON RULES OF PROCEDURE<sup>1</sup>

Acharya J. B. Kripalani (United Provinces: General): Sir, we have assembled here, having no Rules of Procedure. Therefore it was that Pandit Jawahar Lal Nehru moved his first resolution so that till we are able to make our rules, the rules that apply in the conduct of business in the Central Assembly may be applied in any resolution that we might discuss here before we have made our rules. These rules require very careful consideration. For that purpose I propose that a Committee be appointed. I therefore beg leave to move the following resolution:

"The Assembly resolves—

- (1) to appoint a committee consisting of a Chairman and 15 others members to report on the following matters:
- (a) Rules of Procedure of the Assembly."

You will find in the copy you have got the words "Sections and Committees". Sections and Committees are part of this Assembly,

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1. *Ibid*, pp. 21-30.

## APPOINTMENT OF THE PROCEDURE COMMITTEE

and the words therefore appear to me to be superfluous. I have therefore taken them off. So—

- (a) Rules of Procedure of the Assembly;
  - (b) Powers of the Chairman;
  - (c) Organisation of the work of the Assembly, including the appointment and powers of Office-bearers other than the Chairman; and
  - (d) Procedure for the declaration and filling of vacancies in the Assembly;
- (2) that the chairman shall be the Chairman of the Committee;
  - (3) that the Members of the Committee be elected in the manner prescribed in the Schedule; and
  - (4) that, pending the decision of the Assembly in that behalf, the Chairman shall—
    - (a) fix the allowances of the Members of the Assembly;
    - (b) in the case of the servants of the Government of India or any Provincial Government whose services are placed at the disposal of the Assembly, fix their salaries and allowances in consultation with the Governments concerned; and
    - (c) fix the salaries and allowances of all other persons recruited directly for the business of the Assembly.

## SCHEDULE

1. The Members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote. The election shall be conducted as nearly as possible in accordance with the regulations in force in this behalf in the Central Legislative Assembly.

2. The Chairman shall fix and announce a date and time for the holding of the election (if necessary) of the Members of the Committee.

3. Notice may be given by any member desirous of proposing a member or members for election to the Committee. Notice shall be given in writing addressed to the Secretary and signed by the Member giving notice and shall be left at the Notice Office before 12 NOON on a day to be fixed by the Chairman. The member giving notice must satisfy himself that the Members he proposes are willing to serve if elected.

After this I have added another paragraph. It runs as follows (it is not given in the paper you have got but it may be added):

If within the time appointed by the Chairman any candidate proposed desires to withdraw his name, he shall be free to do (so).

4. If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman will appoint a further period within which the notice aforesaid may be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled.

5. If the total number of candidates nominated is equal to the number of vacancies to be filled, the Chairman shall declare all the candidates to be duly elected.

6. If the total number of candidates nominated exceeds the number of vacancies, an election shall be held in the manner prescribed in rule 1.

7. For the purpose of these rules, a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer have not signed the Assembly Register as members of the Assembly.

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Dr. Suresh Chandra Banerjee (Bengal: General): Is it the intention of the Mover that the Rules should also apply to Sections? In my opinion 'Section' should be specifically mentioned here because you know there are difficulties with particular Sections.

Dr. Syama Prasad Mookherjee (Bengal: General): I also support the proposal made by Dr. Suresh Chandra Banerjee. I think it will be safer to accept it. If it is the intention of the Mover that the Rules Committee will also frame rules for Sections and Committees it is desirable to include Sections and Committees specifically in the Resolution; so that it may read like this "Rules of Procedure of the Assembly, including Sections and Committees."

The Chairman (Dr. Sachchidananda Sinha): Dr. Syama Prasad Mookherjee is making a suggestion to you that you may kindly accept his proposal to include or add one word there.

Acharya J. B. Kripalani: I think that the Rules of Procedure of Assembly, Sir, include the rules for Sections and Committees and I do not see why this superfluous addition be made in the draft as I have presented before the House.

Dr. Syama Prasad Mookherjee: May I just explain, Sir, that it is very necessary that the words 'including Sections and Committees' should be mentioned here? When the Sectional Assemblies will meet each may frame its own Rules of Procedure. The question may then arise whether the Constituent Assembly as such

## APPOINTMENT OF THE PROCEDURE COMMITTEE

had the authority to frame Rules of Procedure for the Sections at all. Reference has then to be made to the Resolution which gave authority to the Rules Committee to frame rules and then the only mention which will be found will be that this Committee was appointed to frame Rules of Procedure of the Assembly. It will then be a question of interpretation whether the Rules Committee was at all entitled to frame rules for the Sections. If your intention is that this Rules Committee will also frame rules for the Sections, why not say specifically 'including Sections and Committees', so that there may not be any ambiguity or doubt whatsoever when Sections start doing their work?

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): I support the amendment of Dr. Mookherjee.

The Chairman (Dr. Sachchidananda Sinha): Have you any objection to substituting or adding that word 'including' there to make, as they contend, the sense clearer still?

Acharya J. B. Kripalani: I think if there are additional rules necessary for the Sections, it will be laid down that the Sections will not make any rules inconsistent with the rules of the whole Assembly. My submission, Sir, is that this Rules Committee will make general rules of a very broad nature and these will apply to Sections and Committees. If any Committee or if any Section wants any additional rules, they shall be made by it subject to this that such rules shall not be inconsistent with the general rules that this Committee has made. Therefore, I would like this section of the Resolution to stand as it is.

Sardar Harnam Singh (Punjab: Sikh): Mr. Chairman, I have got two points to put before this House regarding the Resolution proposed by Acharya Kripalani. One relates to para. 1(a) of the resolution. I agree with Dr. Syama Prasad Mookherjee that instead of the words in para. 1(a) of the resolution, "Rules of Procedure of the Assembly" it should be "Rules of Procedure of the Assembly, its Sections and Committees". That is my first proposal. The Cabinet Mission in their elucidations always referred to the Sections as Sections of the Constituent Assembly. Therefore, my proposal is that para. 1(a) of the rule must be read as "Rules of Procedure of the Assembly, its Sections and Committees".

Now there is another matter. Acharya Kripalani, in moving the Resolution stated that the words, "Sections and Committees", were superfluous and therefore he was for deleting them. In the proposed Rules of Procedure for the Assembly, it is therefore understood that the Rules of Sections and Committees are included. One of the Committees that you will be setting up in this preliminary

session is the Advisory Committee for certain purposes outlined in paragraph 20 of the Cabinet Mission's proposals. The Cabinet Mission have clearly stated that the Advisory Committee must have full representation of the minorities. Now, when the Rules of Procedure for that Committee are to be framed by a Committee which is to be elected by this House, according to paragraph 1 of the Schedule, I fear that minorities will not have any say in the Rules which are to regulate the procedure of the Advisory Committee. Therefore, my second proposal is that para. 1 of the Schedule, must read "Ten of the members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote" and I wish to add a second para. That second para would be, "The remaining five shall be nominated by the Chairman of the Assembly so as to give adequate representation on the Committee to important minorities." Otherwise, I fear the work of the Advisory Committee might be regulated in such a way as may go to the detriment of some important sections of this House, namely, the minorities. These are my two proposals and I submit that clause (1) may be amended as suggested and an additional para may be added to the Schedule as para 2 and instead of seven paragraphs in the Schedule, we may have eight.

Mr. K. M. Munshi (Bombay: General): Mr. Chairman, I rise to support the amendment moved by Mr. Suresh Chandra Banerjee and supported by Dr. Syama Prasad Mookherjee. The Business of this Assembly, to borrow the phraseology of the House of Commons, would naturally include the business of its Sections and Committees. Therefore, if the words stood as they are, "Rules of Procedure of the Assembly," there would be strictly no need to mention Sections and Committees. There is no doubt about that. But at the same time, we have not yet a clarification of the State Paper about this matter and it would be extremely unwise, I submit, Sir, to omit the words "Sections and Committees" because that would show that this Constituent Assembly is not a self-determining and self-governing institution which we insist it is. We may lay ourselves open to the argument that any part or any section of it or any Committee of it can function independently or frame its own rules. Acharya Kripalani himself mentioned that if we left the thing as it is, rules could be made, whereby we can lay down that the Sections and Committees will not have the power to make rules which are contrary to or inconsistent with the rules made by this Committee. That argument itself shows that it is competent for this Procedure Committee to regulate to some extent the procedure of the Sections and Committees. In view of the dis-

## APPOINTMENT OF THE PROCEDURE COMMITTEE

cussion which has already taken place here, it is much better that the words "Sections and Committees" should stand rather than their absence lead to further discussion on the interpretation of our Resolution. I envisage a point of order. Suppose this Procedure Committee starts considering questions about Sections or even incorporating a rule, as Acharya Kripalani desired, a point of order is sure to be raised whether the word "Assembly" includes 'Sections and Committees'. At that time, it would be the Chairman of the Procedure Committee, who will have to give the ruling. It is better that that point should not be left merely to the decision of the Chairman of the Procedure Committee, who may be the permanent Chairman. It should be laid down definitely by this House that the Constituent Assembly is one and indivisible, that the Sections as already pointed out are Sections of the Assembly, and that they do not form independent bodies which can provide for procedure inconsistently with the rules of the Constituent Assembly. I therefore submit that it is necessary, particularly now as the question has been raised on the floor of this House, that the scope and extent of this resolution should be made clear by adding the words "Rules of Procedure of the Assembly including its Sections and Committees".

The Hon'ble Srijut Basanta Kumar Das (Assam: General): Mr. Chairman, Sir, much of what I was going to say has been anticipated by Mr. Munshi. I would like to raise at this stage a point of order on the fundamental question as to whether this Constituent Assembly will have any right to scrutinize the work of the Sections and of Advisory Committees. This is necessary, Sir, in view of the principle that underlies the amendment that has been moved for including the Sections and Committees within the scope of the Resolution. Different functions have been allotted to the Sections and to the Advisory Committees. A Section will frame the Provincial Constitution and also a Group Constitution. The Advisory Committee will advise on the fundamental rights of citizens, on the way as to how the interests of minorities are to be protected and as to the scheme to be formulated for the administration of Excluded Areas. Now whatever the Sections and the Advisory Committees do, they may say that this Constituent Assembly, the Plenary Session, will have no right to scrutinize their acts. I would therefore request you, Sir, to give a ruling on this point as to how far the Constituent Assembly will be entitled to give direction or to examine the work of the Sections and of the Advisory Committees. Therefore, Sir, before this Resolution is adopted and before all the points that have been discussed in connection with the Resolution and the amendments moved on it, are further discussed, I would like to ask from you a ruling on this point.

The Chairman (Dr. Sachchidananda Sinha): I have no desire that my ruling should be dragged into the Federal Court. Therefore, instead of giving a ruling which I have no desire to do, I shall invite Pandit Jawaharlal Nehru to express his views.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Mr. Chairman, Sir, this Resolution was considered to be a formal resolution but from the trend of the discussions held, it seems there is a certain mis-apprehension in the minds of Hon'ble Members. Some hold strong views about it. Undoubtedly anything that is done in the Sections will have to be considered by this House. I think the original draft was a proper draft but when this matter was brought up in the shape of an amendment, then obviously it becomes entirely a different matter. There is opposition and an amendment has been asked to be carried out. If that becomes the expression of the view of the House because that amendment is opposed to the Resolution as originally drafted, it was supposed to give full powers to that Committee to consider the matter. Now an Hon'ble Member from Assam brought in the Advisory Committee into the picture. The Advisory Committee obviously and patently has to report to the Constituent Assembly. There is no doubt about it. I do not think anybody else will have any doubt about it and I take it that all Committees of this House should report to this House. Therefore I wish only to suggest to this Hon'ble House that this is hardly a suitable time at this stage for us to consider the whole scope of this matter when the House is agreed on the main issue. I would therefore suggest that the mover of this resolution, Acharya Kripalani, do accept the amendment that has been put forward.

Acharya J. B. Kripalani: I accept the amendment.

Shri R. V. Dhulekar (United Provinces: General): \*(Mr. Chairman, I desire to the amendment that the intended Procedure Committee.....)

The Chairman (Dr. Sachchidananda Sinha): \*(May I respectfully ask whether the Hon'ble Member does not know English?)\*

Shri R. V. Dhulekar: \*(I know English, but I want to speak in Hindustani.)\*

The Chairman (Dr. Sachchidananda Sinha): \*(Many of the members such as Mr. Rajagopalachari do not know Hindustani.)\*

Shri R. V. Dhulekar: \*(People who do not know Hindustani have no right to stay in India. People who are present in this House to fashion out a constitution for India and do not know Hin-

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\* ( ) \* English translation of Hindustani speech.



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dustani are not worthy to be members of this Assembly. They had better leave.)\*

The Chairman (Dr. Sachchidananda Sinha): \*(Please say what you wish to say.)\*

Shri R. V. Dhulekar: \*(I desire to move that the Procedure Committee should frame all rules in Hindustani which may be translated into English.)\*

The Chairman (Dr. Sachchidananda Sinha): \*(Order, order! You are not permitted by me to address the House on the question of bi-lingualism, and printing of papers in two or more languages. You are completely out of order. You came to speak on the amendment to Acharya Kripalani's resolution.)\*

Shri R. V. Dhulekar: \*(My amendment is that the Procedure Committee should frame rules in Hindustani. They may then be translated into English. When a member discusses a rule he will read its Hindustani version and demand a decision on the basis of that version and not English. I am sorry .....)\*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: \*(I am moving an amendment to Acharya Kripalani's resolution. As a member of the House I have a right to do so. I move that the Procedure Committee should frame rules in Hindustani and not in English. As an Indian I appeal that we, who are out to win freedom for our country and are fighting for it, should think and speak in our own language. We have all along been talking of America, Japan, Germany, Switzerland and House of Commons. It has given me a headache. I wonder why Indians do not speak in their own language. As an Indian I feel that the proceedings of the House should be conducted in Hindustani. We are not concerned with the history of the world. We have the history of our own country of millions of past years.)\*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: \*(I request you to allow me to move my amendment.)\*

The Chairman (Dr. Sachchidananda Sinha): Order order! \*(I do not permit you to proceed further. The House is with me that you are out of order.)\*

Acharya J. B. Kripalani: I submit that if it will help the House to cut short the discussion I would accept what has been suggested.

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\* ( ) \* English translation of Hindustani speech.



The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): I want to say a few words on this Resolution. I am not sure whether the views I am now putting before this Assembly will not be regarded as too cautious, but I am bound to point out a few considerations which I want the House to note carefully. These considerations are against the express mention of the words "Sections and Committees". My view is no doubt actuated by a feeling of caution, which I think is desirable at the present stage. Remember the word "Sections". You are asked by express terms to legislate for them in advance of their future formation. Remember "Sections" include 'B' and 'C' Sections. Remember further that in 'B' and 'C' Sections there is likely to be—almost certainly to be—a preponderance of a certain group of men who are not present here today and who may be present at the date when these Sections begin to function. That group of men are not present here today under a feeling of suspicion, if not hostility. Would you like to legislate for them in advance at this stage, or would you not let the matter remain where it is, namely, that as the word 'Assembly' *prima facie* would include 'Sections' no rules can be framed by Sections 'A', 'B' and 'C' which are in conflict with the rules of the Assembly? This would be the usual constitutional rule. Would you not rather let matters rest at this, or would you go further and rub the point in by making an express mention of Sections implying thereby that we here today, in the absence of that group, make it obligatory by express words that the rules framed by the Assembly shall apply to the Sections. Such rubbing in is absolutely unnecessary, because the rules of the Assembly would *prima facie* include rules of the Sections. Remember that this group of men is not present here today and is, besides, watching these proceedings with jealousy and suspicion to discover whether you are taking anything out of their hands and deciding it finally in advance of their arrival. If you do so may it not interfere with their future arrival here in a friendly and trustful atmosphere? I therefore suggest that the words as they stand in the original Resolution of Acharya Kripalani may be accepted instead of going further to make an express mention of Sections and Committees.

Mr. Debi Prosad Khaitan (Bengal: General): Mr. President, Sir, I had no desire to speak on this motion, but in view of one word used by Mr. Munshi, in the course of the amendment, namely, to add the word "its" and the subsequent speech delivered by my estimable friend, Dr. Jayakar, I felt inclined to speak a few words. I shall first deal with the suggestion made by Mr. Munshi, namely, the inclusion of the word "its". I hope that the Hon'ble Mover of the amendment, Dr. Syama Prasad Mookherjee, will not

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accept that suggestion. The use of the word "its" in the course of this Resolution might put upon it an interpretation which is not intended either by Dr. Mookherjee or Acharya Kripalani. It might be interpreted to mean that the word "its" limits the scope to Committees appointed by the Assembly and not appointed by the Sections. Therefore, I suggest, Sir, that the amendment as moved by Dr. Syama Prasad Mookherjee, namely, "Assembly including Sections and Committees" be accepted by this House.

As regards the fear expressed by Dr. Jayakar, I would not suggest, as explained by Pandit Jawaharlal Nehru and Acharya Kripalani, that this Assembly is one entitled to make rules governing the procedure not only of the Union Constituent Assembly as such but also governing the procedure of all Sections and Committees that may be brought into operation by it. I have not the slightest doubt that, whether any group of members be present in this House or not, this Assembly has got to proceed with its work in its entirety. Irrespective of the question whether that group decides to join or not to join, we have got to carry on our work, and I do hope that as time passes that group of men will see fit to serve the interests of the country as a whole by joining it and advising us how to shape the destiny of the country. But, so long as they are not here, I repeat my submission that we should go on with our work, with our heart in it and looking to the interests of the country as a whole. I therefore hope that no fears will be felt or expressed. Let us include in this Resolution the words "Sections and Committees" to avoid future complications. I hope the House as a whole will accept that amendment.

Mr. S. M. Prater (Madras: General): Mr. Chairman, I would like completely to support what was being said by Dr. M. R. Jayakar. I feel that while this House might frame general Rules of Procedure it ought not at this stage to interfere with or frame rules for Sections. Dr. Jayakar has pointed out the implications of that, and it will be good politics to follow what Dr. Jayakar has said. We all want to do these things, but not at this stage. There is time for it. Therefore I whole-heartedly support that the Resolution as originally moved by Acharya Kripalani do stand.

Mr. Sarat Chandra Bose (Bengal: General): Mr. Chairman, I think it would conduce to clarity if the words suggested by my friend Dr. Suresh Chandra Banerjee, and which suggestion was supported by my friend Dr. Syama Prasad Mookerjee, were introduced into this Resolution and accepted by the House.

An Hon'ble Member: The words "including its Sections and Committees".

Another Hon'ble Member: Not "its".

Mr. Sarat Chandra Bose: The word "its" does not improve the position, and I am quite satisfied if the words "including Sections and Committees" are introduced into the Resolution. Acharya Kripalani in moving the Resolution said that it was his intention that the Rules of Procedure of the Assembly should govern the Sections and Committees as well. But as the point has been raised from different sides of the House whether it should be done or not done, I think it will settle all future disputes if we accept the addition of these words. I would desire to refer in this connection to what Dr. Jayakar said. I do not think it would introduce any conflict at all in future if this Assembly were to lay down Rules of Procedure which would govern not only the main Assembly but its Sections and Committees as well. On the contrary, I feel that it would resolve many a conflict in advance. I do not desire to say more than this, that if we are thinking that any conflicts would arise between the main Assembly and the Sections, we had better resolve the conflict here and now by introducing the words "including Sections and Committees".

The Hon'ble Mr. B. G. Kher: I am not very anxious to make a speech at all. We ought not to leave any doubt in the minds of this Assembly or the world outside that this Assembly is supreme in so far as its Sections and its procedure are concerned. After the debate and the various fears that have been now expressed, I think it would be impolitic to refuse to accept the words "Sections" as also "Committees". We are not at all certain to-day whether the Sections are coming in or whether the Sections are going to sit. A good way out of it would be to add the words "with power to co-opt" so that when other people do come, if these rules are not acceptable or if these rules are required to be amended, or if any suggestions are made, it would be possible to amend them. I suggest, therefore, that it would be best to give the Committee which we are now going to appoint power to co-opt so that they may from time to time be able to suggest amendments and alterations which could be afterwards confirmed, ratified or rejected by the House. So that I think we should at present accept the amendment of Dr. Syama Prasad Mookherjee with this further addition "with power to co-opt". If that is done, I feel that we shall meet the needs of the situation much better.

Mr. Jairamdas Daulatram (Sind: General): I do not wish to take much time of the House at this late stage of the debate. I will say very briefly whatever I have to say. I think everybody should take the stand that this Constituent Assembly is the supreme body. It must have the right to frame rules for its Sections and Committees. I do not think that it is wise to keep simply the word

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“Assembly” and then leave it to be interpreted that we intended the word to include Sections and Committees. “Intentions” and their “interpretations”, as experience has shown us, are a dangerous thing. We ought to make everything as clear as possible. At the same time we have got to deal with the possibility of those friends who are absent to-day joining us at a later stage. If that development does take place we may provide for it. Therefore, I support what my friend, Mr. Kher, has said. At the same time, the word “including” is, in my opinion, inappropriate. If the original form is retained, then the little rubbing in which the word “including” involves would also be removed. Again we need not frame all the rules at once. It may be that with regard to the Sections, rules may have to be framed later, or we frame rules now with this understanding that if any changes or amendments become necessary, they will be made by the Procedure Committee, and if it has got the power to co-opt additional members, all the difficulties and possible developments will have been met.

Acharya J.B. Kripalani: There seems to be some misapprehension about the scope of the work of this Committee and also the time for which this Committee will be in existence. As I pointed out, while submitting this resolution before you, the rules that are required to be made are for the conduct of business now and here. We have absolutely no rules, we are writing on a clean slate. I also said that the rules would be more or less such as guide the proceedings of all Assemblies, and these would be of a general nature. There is no doubt in my mind that more rules will have to be framed by Committees themselves and by Sections. They may be called by-rules or by any other name. This Committee will not frame exhaustive rules. As for the question of co-option, it need not arise at this stage. This Committee is not going to be permanent. When any section of the House that is absent today decides to come in, then, if they have any objection to the rules that have been framed, this House can always order that they be revised. Therefore this question of co-option also does not arise. I think it is a bad method to appoint a Committee and to give it powers of co-option when that Committee has been formed by the method of the single transferable vote. I do not know, Sir, whether you have admitted an amendment that ten people be selected by single transferable vote and five be co-opted from minorities. We have already made provision that the members of this Committee be selected by the method of the single transferable vote. That should bring in all minorities. It is not good that minorities should be appointed by a body of ten people. Therefore, I oppose that amendment if you, Sir, have allowed it.

As for including the words 'including Sections and Committees', as there is a large body of opinion in favour of it, I accept it. (*Cheers*).

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ELECTION OF PERMANENT CHAIRMAN, WEDNESDAY,  
11TH DECEMBER, 1946<sup>1</sup>

The Chairman: The next item of today's agenda is the election of the permanent Chairman.

I have received the following nomination papers:—

"I propose the name of Dr. Rajendra Prasad, Member, Constituent Assembly, for the Chairmanship of the Constituent Assembly. I have secured the consent of the nominee.

Proposer.—J. B. Kripalani.

Seconder.—Vallabhbhai Patel.

I agree to the nomination. Rajendra Prasad."

This nomination paper is valid, and is in order. There is another nomination paper:

"I propose Dr. Rajendra Prasad as Chairman of the Assembly and I have ascertained that he is willing to serve if elected.

Proposer.—The Hon'ble Sri Harekrushna Mahtab.

I Second the above. Nand Kishore Das."

This nomination also is in order.

The other two proposals received are invalid. One of them sent by the Hon'ble Mr. Prakasam was sent in beyond time, and I do not see the name of any seconder.

Similarly, I have got before me another proposal by Sir S. Radhakrishnan. That also, I feel, is not in order, because it has got no seconder; and neither of these two documents (the one sent by the Hon'ble Mr. Prakasam and the other sent in by Sir S. Radhakrishnan) has got any endorsement from Dr. Rajendra Prasad that he is willing to serve. However, as the other two proposals are perfectly valid and in order, and there is no other nomination paper before me, I hereby declare the Hon'ble Dr. Rajendra Prasad, as the duly elected permanent Chairman. (*Cheers*)

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1. *Ibid*, p. 35.

## CONGRATULATIONS TO THE PERMANENT CHAIRMAN

My next duty as temporary Chairman is to request that Acharya Kripalani and Maulana Abul Kalam Azad Sahib will kindly approach, on behalf of the Constituent Assembly, the duly elected President of this House now, and bring him up to the platform to sit on the chair by my side. (*Cheers*)

(The Hon'ble Doctor Rajendra Prasad was conducted to the chair by Acharya Kripalani and Maulana Abul Kalam Azad Sahib.)

The Chairman: Hip hip hurrah! Hip hip hurrah !!

Hon'ble Members: Inquilab Zindabad! Inquilab Zindabad!!  
Jai Hind! Jai Hind!!

The Chairman: Now that the permanent elected Chairman of the House has taken his seat, it is open to Hon'ble Members to offer to him their congratulations. I call upon Sir S. Radhakrishnan to be the first speaker.

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## CONGRATULATIONS TO THE PERMANENT CHAIRMAN<sup>1</sup>

### (i)

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir, I consider it a great honour to be called upon to be the first speaker after the election of the permanent Chairman of the Constituent Assembly. I offer to him, on behalf of this House, our most respectful congratulations on the unique honour that has been conferred on him.

This Constituent Assembly has met here to frame the constitution, to effect the withdrawal of British control, political, economic and military, and to establish a free independent India. If successful, this transfer of authority will be the biggest and the least bloody of all transfers in human history. (*Cheers*)

The first Britisher to arrive in this country was a Jesuit Missionary in 1579. He was followed by merchants who came to trade but stayed to rule. In 1765 the authority was transferred to the East India Company. Later it was gradually subordinated to and replaced by the authority of Parliament and it has been continuing till now on the famous principle enunciated by Cecil Rhodes—the principle fundamental to imperialism—philanthropy plus 5 per cent. On

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1. *Ibid*, pp. 36-8.

that principle it has worked. Right through however there were protests against the British rule. All these protests became canalized when the Indian National Congress was established in 1885. It adopted mild methods till the advent of Mahatma Gandhi when it became aggressive and dynamic. In 1930 the Resolution for the Independence of India was passed at Lahore and we are now here to give effect to that resolution. The British are empirics from beginning to end. It was Lord Palmerston who said 'We British have no eternal principles, we have only eternal interests'. When they adopt any particular line of action you may take it that it is not a willing surrender of power or authority but it is a response to the historic necessities of the case. When the discontent grew up they gave us the Morely-Minto Reforms and they introduced the principle of communal electorates and these communal electorates were intended to keep the people apart. The higher mind of Britain advised the local officials that they would betray the trust placed upon them if they foisted communal electorates. They would inject poison into the very body politic which could be removed, if at all, at the cost of a civil war. We know how those anticipations are getting realized to-day. We had after that, the Montford Reforms and then the 1935 Act, the Cripps' proposals and now the Cabinet plan. The latest Statement of His Majesty's Government on this question indicates how it is not in human nature to surrender power easily. (*Hear, hear.*) Playing off one section against another is unworthy of a great people. It is much too clever to be permanent and would embitter the relations of this country and Great Britain. (*Hear, hear.*) It is essential for the British to understand that if an act is done it must be done with the utmost grace. All the same we are here assembled to draw up a constitution for future India. A constitution is the fundamental law of the nation. It should embody and express the dreams and passions, the ideals and aspirations of the people. It must be based on the consent of all, and respect the rights of all people who belong to this great land.

We have been kept apart. It is our duty now to find each other. We all deplore—speakers yesterday and day before yesterday deplored—the abstention of the representatives of the Muslim League from this Constituent Assembly. We take it that it will only be temporary, for their co-operation is absolutely essential for the success of any constitution which we may lay down. But in approaching these matters our attitude should be one of realism. Take the problems from which we suffer; our hunger, our poverty, our disease, our malnutrition—these are common to all. Take the psychological evils from which we suffer, the loss of human dignity, the slavery



## CONGRATULATIONS TO THE PERMANENT CHAIRMAN

of the mind, the stunting of sensibility and the shame of subjection; these are common to all—Hindus or Muslims, Princes or Peasants. The chains may be made of gold but they are still chains that fetter us. Even the Princes will have to realise that they are slaves in this country. (*Hear, hear.*) If they have a sufficient sense of self-respect and exercise a little self-analysis, they will find how much their freedom is fettered.

Again, the people—whether they are Hindus or Muslims, Princes or Peasants—belong to this one country. Earth and Heaven have combined to make them belong to one another. If they try to disown it, their gait, their cast of countenance, their modes of thought, their ways of behaviour, they will all betray them. (*Hear, hear.*) It is not possible for us to think that we belong to different nationalities. Our whole ancestry is there.

It is essential for any constitution which is drawn up to make all the citizens realize that their basic privileges—educational, social and economic—are afforded to them; that there will be cultural autonomy; that nobody will be suppressed; that it will be a constitution which will be democratic in the true sense of the term, where, from political freedom we will march on to economic freedom and equity. Every individual should feel that he is proud to belong to this great land.

Apart from all these, a nation does not depend on identity of race, or sentiment, or on ancestral memories, but it depends on a persistent and continuous way of life that has come down to us. Such a way of life belongs to the very soil of this land. It is there, indigenous to this country as much as the waters of the Ganges or the snows of the Himalayas. From the very roots of our civilisation down in the Indus Valley to the present day, the same great culture is represented among Hindus and Muslims; we have stood for the ideal of comprehension and charity all these centuries.

I remember how Anatole France went up to the Musée Guimet on the first of May 1890 in Paris and there in silence and simplicity of the gods of Asia reflected on the aim of existence, on the meaning of life, on the values which peoples and Governments are in search of. Then his eyes fell on the statue of the Buddha. France felt like kneeling down and praying to him as to a God, the Buddha, eternally young, clad in ascetic robes, seated on the lotus of purity with his two fingers upraised admonishing all humanity to develop comprehension, and charity, wisdom and love, PRAJNA and KARUNA. If you have understanding, if you have compassion, you will be able to overcome the problems of this world. Asoka, his



great disciple, when he found his Empire inhabited by men of all races and religions said:

*Samavāya eva sadhuḥ.*

‘Concord alone is the supreme good.’

India is a symphony where there are, as in an orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score. It is this kind of combination that this country has stood for. It never adopted inquisitorial methods. It never asked the Parsis or the Jews or the Christians or the Muslims who came and took shelter there to change their creeds or become absorbed in what might be called a uniform Hindu humanity. It never did this. ‘Live and let live’—that has been the spirit of this country.

If we are true to that spirit, to that ideal which has dominated our cultural landscape for five or six thousand years and is still operating, I have no doubt that the crisis by which we are faced today will be overcome as many other crises in our previous history have been overcome. Suicide is the greatest sin. To murder yourself, to betray yourself, to barter away your spiritual wealth for a mess of pottage, to try to preserve your body at the expense of your spirit—that is the greatest sin. If we therefore stand out for the great ideal for which this country has stood, the ideal which has survived the assaults of invaders, the ideal to which the unheeding world today is turning its attention, if we are able to do it, the flame which has sustained us in overcoming foreign rule, will free our efforts to build a united and free India.

It is not an accident that our temporary Chairman, Dr. Sachchidananda Sinha and our permanent Chairman, Dr. Rajendra Prasad, both come from Bihar. They are both impregnated with the spirit of the VIHARA—the invincibility of gentleness, the gospel of India. The Mahabharata says:

*Mṛidunā dāruṇam hanti,  
Mṛidunā hanti adāruṇam;  
Nāsādhyam mṛidunā kiñchit,  
Tasmāt tikṣṇataram mṛiduḥ.*

‘Gentleness can overcome the hardest things; it can overcome the softest things. There is nothing impossible to be overcome by gentleness, and therefore the sharpest weapon we have is gentleness’.

Softness, gentleness—that is the greatest weapon which will wear out the highest kind of opposition. We have not been true to

## CONGRATULATIONS TO THE PERMANENT CHAIRMAN

it. We have betrayed and done wrong to millions of our own fellow beings. It is now time for us to make atonement for all our past guilt. It is not a question of justice, or charity, it is atonement—that is how I would put it.

In Dr. Rajendra Prasad we have one who embodies this spirit of gentleness. (*Cheers*) He is the soul of goodness, he has great patience and courage, he has suffered. It is not an accident that this year which marks the sixtieth year of the Indian National Congress, is also the year of the opening of the Constituent Assembly. We have to remember with gratitude all those great souls who worked and suffered for the freedom of this country, for the dawn of this day. Thousands died, more thousands suffered privation, imprisonment, and exile, and it is their suffering that has cemented and built up this great edifice of the Indian National Congress. (*Hear, hear.*) We have to remember them all. Rajendra Prasad is the suffering servant of India, of the Congress, who incarnates the spirit for which this country stands. I only hope that this spirit of amity, concord and harmony which has come down to us from the image of Siva in the Indus civilisation down to Mahatma Gandhi and Dr. Rajendra Prasad, will inspire our efforts. (*Applause*)

(ii)

### *Shrimati Sarojini Naidu's Address.*<sup>1</sup>

The Chairman, Dr. Sachchidananda Sinha: I shall now request Bulbul-i-Hind, the Nightingale of India, to address the House (*Laughter and cheers*) not in prose but in poetry.

(Mrs. Sarojini Naidu then went up to the rostrum amidst acclamation.)

Mrs. Sarojini Naidu (Bihar: General): Mr. Chairman, the manner of your calling me is not constitutional." (*Laughter*)

Dr. Sachchidananda Sinha (The Chairman): Order, Order. No reflection on the Chairman please! (*Continued laughter.*)

Mrs. Sarojini Naidu: It reminds me of some lines of the Kashmiri Poet who said:—

*Bulbul ko gul Mubarak, gul ko chaman mubarak,  
Rangeen tabiaton ko range sukhan mubarak.*

And today we are steeped in the rainbow coloured tints of speeches in praise of my great leader and comrade, Rajendra Prasad. (*Cheers*) I do not know how even poetic fancy can add yet another tint to

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1. *Ibid*, pp. 46-8.

the rainbow. So I will be modest, emulating the example of Rajendra Babu himself and confine myself, as a woman should, to purely domestic issues. (*Laughter*) We have all been taken in the chariot of oratory by our great philosopher Sir Radhakrishnan who seems to have evaporated from the scene. (*Laughter*)

Sir S. Radhakrishnan: No, no. I am here. (*Renewed laughter.*)

Mrs. Sarojini Naidu: He has poured very eloquent wisdom on us. And also all the other speakers representing different provinces, sects, religions, communities and the gentleman who is asking all of us to quit India after the British, tracing his claim to the original people of this land, have all spoken in their turn, and one thing they have all been unanimous is the question of Rajendra Prasad himself. Some time ago I was asked to compress an epic into an epigram about Rajendra Prasad. I was asked to say a line about Rajendra Prasad, and I said that I could only do so if I had a pen of gold dipped in a pot of honey because all the ink in the world would not suffice to explain his qualities or adequately to pay tribute to his qualities. Very rightly one speaker reminded us, though I agree with one part of it, that both the temporary Chairman and the permanent Chairman were born in Bihar and that both have assimilated some of the qualities of the Great Buddha who was born in Bihar. I say that I agree on one point, not on the other. The point which I wish to agree with is that Rajendra Prasad has certainly descended spiritually from the great Buddha, the embodiment of compassion, understanding, sacrifice and love. For many years, I have been privileged to be associated with him. He is my leader, he is my comrade, he is my brother, much younger brother. That I knew on his birthday; I found that he is over five whole years younger than I am and, therefore, I am in a position to give him my blessings as well as my tributes of praise. In this House, where every one has said with conviction that he would be the guardian and the father of the House, I conceive him not as one with the flaming sword but an angel with the lily which wins victories over the hearts of men, because in him there is essential sweetness, that is part of his strength, there is essential wisdom, that is part of his experience, there is essential clarity of vision, creative imagination and creative faith that brings him very near the feet of Lord Buddha himself. I see gaps in this House and my heart is sore because of the absence of those Muslim brothers to whose coming I am looking forward under the leadership of my old friend Mr. Muhammad Ali Jinnah. I think if any persuasion

## CONGRATULATIONS TO THE PERMANENT CHAIRMAN

were necessary, if any fine wand of magic were necessary to bring them in, it would be the essential sweetness, the essential wisdom, the essential creative faith of Dr. Rajendra Prasad. I am hoping and I believe I am right in hoping that my friend Dr. Ambedkar who is so bitter today will soon be one of the most emphatic supporters of this Constituent Assembly in all its purposes and that through him his adherents of many millions will realise that their interests are as safe as the interests of more privileged people. I hope those that call themselves the original masters of this land, the tribal people, will realise that there is no distinction of caste, creed, ancient or modern status in this Constituent Assembly.

I hope the smallest minority in this country will, whether represented politically, or I do not know by what other means they may be represented—I hope they will realise that they have a jealous, vigilant and loving guardian of their interests who will not permit the more privileged to encroach by a hair's breadth on their birthright of equity and equal opportunity in this country. I hope also that the Princes of India, many of whom I count among my personal friends, who are so harried, so anxious, so uncertain or so afraid today, will realise that the constitution for India is a constitution for the freedom and emancipation of every human being in India, whether Prince or peasant. I want that realisation to be carried home, and in no better manner, in no more convincing manner can it be carried than through the guidance and guardianship of Dr. Rajendra Prasad. I have been asked to speak—for how long? But I believe that I must disprove the age-old proverb that woman has not only the last but the longest word. I have the last word not because I am a woman but because I am acting today as the hostess of the Indian National Congress which has so gladly invited those who are outside its fold to come and participate with us in framing the constitution that is to be the immortal charter of India's freedom.

Friends, I do not praise or commend Rajendra Prasad, I affirm that he is the symbol of India's destiny today. He will help us in framing that charter that restores to our Mother—our Mother still in fetters—her rightful place as torchbearer of liberty, love, and peace.

Standing in the immemorial house with its roof of snow, once again in the history of humanity she will rekindle her lamp of wisdom and inspiration to illuminate the world on its onward march

to freedom. So, will she be justified of her children and the children be justified of her.

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REPLY OF THE PRESIDENT, THE HON'BLE DR. RAJENDRA PRASAD<sup>1</sup>

\*Brothers and sisters, pardon me if I say that I feel overwhelmed with the burden you have placed on my shoulders by entrusting me with this most important duty. By electing me for this high rank you have bestowed upon me an honour which is the highest honour for an Indian. Allow me to say that in this country of castes and creeds, you have, as it were, cast me out of your caste. Depriving me of a seat among yourselves you have compelled me to sit on a different Chair, and it does not end there. I believe all of you expect me to do nothing in this House which will show that I belong to a particular party or sect; you will expect that whatever I do here, will be done in a spirit of service to you all. I shall try to carry the honour conferred on me in a manner which will gladden the hearts of all of my brethren and my elder sister here, who have felicitated me at this occasion. I am aware that my path is beset with obstacles. The work of this Constituent Assembly is most arduous. Various problems will come before it and it will be confronted with questions which will not yield easily to solution. I know I will not be able to solve them but I have full confidence in you that you will help me at each step with the same kindness and liberality with which you have elected me here.

The Constituent Assembly is meeting at a most critical time. We all know that other constituent assemblies, whenever and wherever they met, were confronted with similar difficulties. They had also to contend with internal differences which were placed before them with great vehemence. We also know that many of these constituent assemblies were held amidst strife and bloodshed; even their proceedings were conducted amidst quarrels and fights. In spite of all these obstacles those assemblies carried on their work to the end. Their members joined together and with courage, kindness, generosity, tolerance and regard for one another's feelings, framed constitutions which were then readily accepted by the people of the countries of which they were most valuable possessions. There is no reason why our Constituent Assembly, in spite of the obstruc-

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1. *Ibid*, pp. 49-51.

\* English translation of Hindustani speech begins.

tions in its way, should not succeed in doing its work. If we are sincere, if we respect each other's opinion, we shall develop so much insight that we will not only be able to understand each other's thoughts, but also be able to go deep to the root and understand each other's real troubles. We will then function in a manner that no one will give any one cause to think that he has been ignored or that his opinion has not been respected. If this comes to pass and if this strength is born in us, I have full faith that in spite of all obstruction we will succeed in our work.

This Constituent Assembly has come into being with a number of limitations, many of which we will have to bear in mind as we proceed. But, it must also be borne in mind that the Assembly is a sovereign body and is fully competent to conduct its proceedings in the manner it chooses to follow. No outside power can meddle with its proceedings. I also believe that it is competent to break the limitations attached to it at its birth. It should be our effort to get free of these limitations and frame a constitution which will assure all men and women of this country, no matter of what religion, province or shade of opinion that their rights are fully protected. If such an effort is made in this House and we succeed in it, I believe that it will be such a landmark in the history of the world that it will be hard to rival.

It is also to be remembered and we, who are present in the House, cannot forget it even for a moment that many of the seats are vacant in this meeting. Our brethren of the Muslim League are not with us and their absence increases our responsibility. We shall have to think at each step: What would they have done if they were here? We have to proceed keeping all these things in view. We hope they will soon come and take their places and share in the deliberations for framing a constitution for their country which will give it freedom, that they will join us in our march for freedom. But if unfortunately these seats continue to remain unoccupied, it will be our duty to frame a constitution which will leave no room for complaint from anybody.

We have been fighting for the freedom of our country for a long time. This Constituent Assembly has been brought into existence by three forces. First, the sacrifice of our patriots: many men and women gave their lives, bore hardships and persecution and after hard and continuous struggles ushered in the present stage. Second, the history of the British nation; their selfishness and their generosity. Third, the present world conditions and serious situation and the forces that are raging in the world. All these combined together to bring into being our

Constituent Assembly. These forces will continue functioning while we are proceeding with our work. It is quite possible that some of them may draw us to one side and others to the other side. I am, however, confident that success will be ours. I pray to God that He may give us foresight, so that we may understand each other's mind, and that, united together, we may free our country.

I thank my brothers and sisters who have congratulated me. I was overwhelmed with embarrassment and I wished I had not been present during their speeches. My particular thanks are due to Dr. Sinha who continued in the Chair and did not throw additional burden upon me at that time. I once more thank you all for the inspiring sentiments that have been expressed. I assure you that in the proceedings of this House, I shall freely give you whatever strength God has bestowed upon me, whatever little wisdom has been given to me and whatever experience of the world I have. In return I hope you will unstintingly give me the help that you can give me.\*

Friends, I just want to say a few words in English for the benefit of those of you who have not been able to follow my speech in Hindi. Hon'ble Members will not consider it ungracious on my part if I tell them that at the present moment I feel more overwhelmed by a sense of the burden of responsibility which they have placed on my shoulders than by a sense of elation for the great honour which they have conferred upon me. I realize that the greatest honour which an Assembly like this could confer on any Indian, you have been pleased to confer on me, and I am not using merely the language of convention when I say that I appreciate it greatly and I am grateful to you for it.

I know the difficulties which I shall have to face in the discharge of the heavy responsibilities which I have undertaken on your behest. I know the work of the Constituent Assembly is beset with various kinds of obstacles, but I know too that in the discharge of my duties, I can count upon your unstinted support and the same kind of generosity which you have exhibited in electing me to this high honour. Our Constituent Assembly is meeting in difficult circumstances. We see signs of strife in many places in this unfortunate land. But other countries too, when they elected their constituent assemblies and asked them to frame a constitution for them, were faced with similar difficulties. We can take comfort in the fact that in spite of those difficulties, in spite of the differences in view-points which exhibited themselves with vigour, sometimes with trouble and turmoil, the assemblies were able, in spite of

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\* English translation of Hindustani speech ends.



them, to frame constitutions which were acceptable to the people at large and which have become in course of time an invaluable heritage for the people in those lands. There is no reason why we also should not succeed similarly. All that we need is honesty of purpose, firmness of determination, a desire to understand each other's view-point, that we shall do justice, that we shall behave as fairly, as squarely as possible towards everyone else—and with that determination, with that resolve, I cannot see why we should not be able to overcome the obstacles in our way. I am aware that this Constituent Assembly has been born with certain limitations placed on it from its very birth. We may not forget, disregard or ignore those limitations, in the course of our proceedings and in arriving at our decisions. But I know too that in spite of those limitations the Assembly is a self-governing, self-determining independent body with the proceedings of which no outside authority can interfere, and the decisions of which no one else outside it can upset or alter or modify. Indeed it is in the power of this Constituent Assembly to get rid of and to demolish the limitations which have been attached to it at its birth and I hope you, Ladies and Gentlemen, who have come here for framing a constitution for an independent and free India, will be able to get rid of those limitations and to place before the world a model of a constitution that will satisfy all our people, all groups, all communities, all religious groups inhabiting this vast land, and which will ensure to everyone freedom of action, freedom of thought, freedom of belief and freedom of worship, which will guarantee to everyone opportunities for rising to his highest, and which will guarantee to everyone freedom in all respects.

I hope and trust that this Constituent Assembly will in course of time be able to develop strength as all such assemblies have done. When an organisation like this sets on its work it gathers momentum, and as it goes along it is able to gather strength which can conquer all difficulties and which can subdue the most formidable obstacles in its path. Let me pray and hope that our Assembly too will gather more and more strength as it goes along.

It is a most regrettable thing that I find many seats unoccupied today in this Assembly. I am hoping that our friends of the Muslim League will soon come to occupy these places and will be glad and happy to participate in this great work of creating a constitution for our people, creating a constitution which according to the experience of all other nations of the world, which according to our own experience and which according to our own traditions and our own peculiar condition will guarantee to every one all that can be



guaranteed, all that need be guaranteed and all that require to be guaranteed, and will not leave any room for any complaint from any side. I am hoping also that you all will do your best to achieve this great objective.

Above all, what we need is freedom and as some one has said "nothing is more valuable than the freedom to be free". Let us hope and pray that as a result of the labours of this Constituent Assembly we shall have achieved that freedom and we shall be proud of it. (*Applause*)

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RESOLUTION<sup>n</sup> REGARDING AIMS AND OBJECTS,  
13TH DECEMBER, 1946<sup>1</sup>

(i)

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): \*Mr. Chairman, this Constituent Assembly has now been in session for some days. It has done much formal business, but more is yet to be done. We have been cutting our way and clearing the ground on which we intend to erect the edifice of a constitution. It, however, seems proper that before we proceed further we should clearly understand where we are going and what we intend building. It is apparent that on such occasions details are unnecessary. In building, you will, no doubt, use each brick after mature consideration. Usually, when one desires to construct a building, one must have a plan for the structure that one wishes to erect and then collect the material required. For a long time we have been having various plans for a free India in our minds, but now, when we are beginning the actual work, I hope, you will be at one with me when I say that we should present a clear picture of this plan to ourselves, to the people of India and to the world at large. The Resolution that I am placing before you defines our aims, describes an outline of the plan and points the way which we are going to tread.

You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions and the British Government has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this Assembly, after serious deliberation and we shall endeavour to work within its limits. But you must not ignore the source from which this As-

1. *Ibid.*, pp. 57-65.

\* English translation of Hindustani speech begins.

## RESOLUTION REGARDING AIMS AND OBJECTS

sembly derives is strength. Governments do not come into being by State Papers. Governments are, in fact, the expression of the will of the people. We have met here today because of the people behind us and we shall go as far as the people—not of any party or group, but the people as a whole—shall wish us to go. We should, therefore, always keep in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them.

I am sorry there are so many absentees. Many members who have a right to come and attend the meeting are not here to-day. This, in one sense, increases our responsibility. We shall have to be careful that we do nothing which may cause uneasiness in others or goes against any principle. We do hope that those who have abstained, will soon join us in our deliberations, since this Constitution can only go as far as the strength behind it can push it. It has ever been and shall always be our ardent desire to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people. It is, at the same time, manifest that when a great country starts to advance no party or group can stop it. This House, although it has met in the absence of some of its members, will continue functioning and try to carry out its work at all costs.

The Resolution that I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy. A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. The Resolution deals with fundamentals which are commonly held and have been accepted by the people. I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs. Unfortunately, our country is full of differences, but no one, except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic.

On this occasion, when the representatives of the Indian States are not present, I desire to make it clear how this Resolution will affect the Indian States. It has also been suggested, and the suggestion may take the form of an amendment laying down that since certain sections of the House are not present, the consideration of the Resolution may be postponed. In my opinion, such an amend-

ment is not in keeping with the spirit of the times, because if we do not approve the first objective that we are placing before ourselves, before our country and before the world at large, our deliberations will become meaningless and lifeless, and the people will have no interest in our work. Our intention regarding the States must be clearly understood. We do desire that all sections of India should willingly participate in the future Indian Union, but in what way and with what sort of government rests with them. The Resolution does not go into these details. It contains only the fundamentals. It imposes nothing on the States against their will. The point to be considered is how they will join us and what sort of administration they will have. I do not wish to express my personal opinion on the matter. Nevertheless I must say that no State can have an administration which goes against our fundamental principles or gives less freedom than obtaining in other parts of India. The Resolution does not concern itself with what form of government they will have or whether the present Rajas and Nawabs will continue or not. These things concern the people of the States. It is quite possible that the people may like to have their Rajas. The decision will rest with them. Our republic shall include the whole of India. If a part within it desires to have its own type of administration, it will be at liberty to have it.

I do not wish that anything should be added to or subtracted from the Resolution. It is my hope that this House will do nothing that may appear in the papers, so that, at no time, should people, who are concerned with these problems but who are not present here, be able to say that this House indulged in irregular talk.

I desire to make it clear that this Resolution does not go into details. It only seeks to show how we shall lead India to gain the objectives laid down in it. You will take into consideration its words and I hope you will accept them; but the main thing is the spirit behind it. Laws are made of words but this Resolution is something higher than the law. If you examine its words like lawyers you will produce only a lifeless thing. We are at present standing midway between two eras; the old order is fast changing, yielding place to the new. At such a juncture we have to give a life message to India and to the world at large. Later on we can frame our Constitution in whatever words we please. At present, we have to send out a message to show what we have resolved to attempt to do. As to what form or shape this Resolution, this declaration will ultimately take, we shall see later. But one thing is, however, certain: it is not a law; but is something that breathes life in human minds.

## RESOLUTION REGARDING AIMS AND OBJECTS

I hope the House will pass the Resolution which is of a special nature. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed, it will be a sort of pledge that we shall have to carry out. With this expectation and in this form, I place it before you. You have copies of it in Hindustani with you. I will therefore not take more of your time to read it one way, or, I will, however, read it in English and speak further on it in that language.\*

I beg to move:

- “(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- (3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- (5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- (6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

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\* English translation of Hindustani speech ends.

- (7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and
- (8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

Sir, this is the fifth day of this first session of the Constituent Assembly. Thus far we have laboured on certain provisional and procedural matters which are essential. We have a clear field to work upon; we have to prepare the ground and we have been doing that these few days. We have still much to do. We have to pass our Rules of Procedure and to appoint Committees and the like, before we can proceed to the real step, to the real work of this Constituent Assembly, that is, the high adventure of giving shape, in the printed and written word, to a Nation's dream and aspiration. But even now, at this stage, it is surely desirable that we should give some indication to ourselves, to those who look to this Assembly, to those millions in this country who are looking up to us and to the world at large, as to what we may do, what we seek to achieve, whither we are going. It is with this purpose that I have placed this Resolution before this House. It is a Resolution and yet, it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication. And I wish this House, if I may say so respectfully, should consider this Resolution not in a spirit of narrow legal wording, but rather to look at the spirit behind that Resolution. Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion. And so, I cannot say that this Resolution at all conveys the passion that lies in the hearts and the minds of the Indian people today. It seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution before the House and it is in that spirit that I trust the House will receive it and ultimately pass it. And may I, Sir, also, with all respect, suggest to you and to the House that, when the time comes for the passing of this Resolution let it be not done in the formal way by the raising of hands; but much more solemnly, by all of us standing up and thus taking this pledge anew.

The House knows that there are many absentees here and many members, who have a right to come here, have not come. We regret

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that fact because we should have ~~liked to~~ associate with ourselves as many people, as many representatives from the different parts of India and different groups as possible. We have undertaken a tremendous task and we seek the co-operation of all people in that task; because the future of India that we have envisaged is not confined to any group or section or province or other, but it comprises all the four hundred million people of India, and it is with deep regret that we find some benches empty and some colleagues, who might have been here, absent. I do feel, I do hope that they will come and that this House, in its future stages, will have the benefit of the co-operation of all. Meanwhile, there is a duty cast upon us and that is to bear the absentees in mind, to remember always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India. We are all now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation, think sometimes of even the world at large of which our Nation is a great part. And when I think of the work of this Constituent Assembly, it seems to me, the time has come when we should, so far as we are capable of it, rise above our ordinary selves and party disputes and think of the great problem before us in the widest and most tolerant and most effective manner so that, whatever we may produce, should be worthy of India as a whole and should be such that the world should recognise that we have functioned, as we should have functioned, in this high adventure.

There is another person who is absent here and who must be in the minds of many of us today—the great leader of our people, the father of our Nation (*applause*)—who has been the architect of this Assembly and all that has gone before it and possibly of much that will follow. He is not here because, in pursuit of his ideals, he is ceaselessly working in a far corner of India. But I have no doubt that his spirit hovers over this place and blesses our undertaking.

As I stand here, Sir, I feel the weight of all manner of things crowding around me. We are at the end of an era and possibly very soon we shall embark upon a new age; and my mind goes back to the great past of India, to the 5,000 years of India's history, from the very dawn of that history which might be considered almost the dawn of human history, till today. All that past crowds around me and exhilarates me and, at the same time, somewhat oppresses me. Am I worthy of that past? When I think also of the future, the greater future I hope, standing on this sword's edge

of the present between this mighty past and the mightier future, I ~~trouble a little~~ and feel overwhelmed by this mighty task. We have come here at a strange moment in India's history. I do not know but I do feel that there is some magic in this moment of transition from the old to the new, something of that magic which one sees when the night turns into day and even though the day may be a cloudy one, it is day after all, for when the clouds move away, we can see the sun later on. Because of all this I find a little difficulty in addressing this House and putting all my ideas before it and I feel also that in this long succession of thousands of years, I see the mighty figures that have come and gone and I see also the long succession of our comrades who have laboured for the freedom of India. And now we stand on the verge of this passing age, trying, labouring, to usher in the new. I am sure the House will feel the solemnity of this moment and will endeavour to treat this Resolution which it is my proud privilege to place before it in that solemn manner. I believe there are a large number of amendments coming before the House. I have not seen most of them. It is open to the House, to any member of this House, to move any amendment and it is for the House to accept it or reject it, but I would, with all respect, suggest that this is not a moment for us to be technical and legal about small matters when we have big things to face, big things to say and big things to do, and therefore I would hope that the House would consider this Resolution in this big manner and not lose itself in wordy quarrels and squabbles.

I think also of the various Constituent Assemblies that have gone before and of what took place at the making of the great American nation when the fathers of that nation met and fashioned out a constitution which has stood the test of so many years, more than a century and a half, and of the great nation which has resulted, which has been built up on the basis of that Constitution. My mind goes back to that mighty revolution which took place also over 150 years ago and to that Constituent Assembly that met in that gracious and lovely city of Paris which has fought so many battles for freedom, to the difficulties that that Constituent Assembly had and to how the King and other authorities came in its way, and still it continued. The House will remember that when these difficulties came and even the room for a meeting was denied to the then Constituent Assembly, they betook themselves to an open tennis court and met there and took the oath, which is called the Oath of the Tennis Court, that they continued meeting in spite of Kings, in spite of the others, and did not disperse till they had finished the task they had undertaken. Well, I trust that it is in that solemn spirit that we too are meeting here and that we,



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too, whether we meet in this chamber or other chambers, or in the fields or in the market-place, will go on meeting and continue our work till we have finished.

Then my mind goes back to a more recent revolution which gave rise to a new type of State, the revolution that took place in Russia and out of which has arisen the Union of the Soviet Socialist Republics, another mighty country which is playing a tremendous part in the world, not only a mighty country but, for us in India, a neighbouring country.

So our mind goes back to these great examples and we seek to learn from their success and to avoid their failures. Perhaps we may not be able to avoid failures because some measure of failure is inherent in human effort. Nevertheless, we shall advance, I am certain, in spite of obstructions and difficulties, and achieve and realise the dream that we have dreamt so long. In this Resolution which, the House knows, has been drafted with exceeding care, we have tried to avoid saying too much or too little. It is difficult to frame a resolution of this kind. If you say too little, it becomes just a pious resolution and nothing more. If you say too much, it encroaches on the functions of those who are going to draw up a constitution, that is, on the functions of this House. This Resolution is not a part of the constitution we are going to draw up, and it must not be looked at as such. This House has perfect freedom to draw up that constitution and when others come into this House, they will have perfect freedom too to fashion that constitution. This Resolution therefore steers between these two extremes and lays down only certain fundamentals which, I do believe, no group or party and hardly any individual in India can dispute. We say that it is our firm and solemn resolve to have an independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be a republic. I will not go into the arguments about monarchy and the rest, but obviously we cannot produce monarchy in India out of nothing. It is not there. If it is to be an independent and sovereign State, we are not going to have an external monarchy and we cannot have a search for some local monarchies. It must inevitably be a republic. Now, some friends have raised the question: "Why have you not put in the word 'democratic' here?" Well, I told them that it is conceivable, of course, that a republic may not be democratic but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter. The democracies of the present day,



many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they have to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them. We stand for democracy. It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope. The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something much more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution. Others might take objection to this Resolution on the ground that we have not said that it should be a Socialist State. Well, I stand for socialism and hope that India will stand for Socialism and that India will go towards the constitution of a Socialist State, and I do believe that the whole world will have to go that way. What form of Socialism again is another matter for your consideration. But the main thing is that in such a Resolution, if, in accordance with my own desire, I had put in that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some, and we wanted this Resolution not to be controversial in regard to such matters. Therefore we have laid down, not theoretical words and formulæ, but rather the content of the thing we desire. This is important and I take it there can be no dispute about it. Some people have pointed out to me that our mentioning a republic may somewhat displease the Rulers of Indian States. It is possible that this may displease them. But I want to make it clear personally and the House knows, that I do not believe in the monarchical system anywhere, and that in the world today monarchy is a fast disappearing institution. Nevertheless it is not a question of my personal belief in this matter. Our view in regard to these Indian States has been, for many years, first of all that the people of those States must share completely in the freedom to come. It is quite inconceivable to me that there should be different standards and degrees of freedom as between the people in the States and the people outside the States. In what manner the States will be parts of that Union, that is a matter for this House to consider with the representatives

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of the States. And I hope in all matters relating to the States, this House will deal with the real representatives of the States. We are perfectly willing, I take it, to deal in such matters as appertain to them, with the Rulers or their representatives also, but finally when we make a constitution for India, it must be through the representatives of the people of the States as with the rest of India, who are present here. (*Applause*) In any event, we may lay down or agree that the measure of freedom must be the same in the States as elsewhere. It is a possibility and personally I should like a measure of uniformity too in regard to the apparatus and machinery of Government. Nevertheless, this is a point to be considered in co-operation and in consultation with the States. I do not wish, and I imagine this Constituent Assembly will not like, to impose anything on the States against their will. If the people of a particular State desire to have a certain form of administration, even though it might be monarchical, it is open to them to have it. The House will remember that in the British Commonwealth of Nations today, Eire is a Republic and yet in many ways it is a member of the British Commonwealth. So, it is a conceivable thing. What will happen, I do not know, because that is partly for this House and partly for others to decide. There is no incongruity or impossibility about a certain definite form of administration in the States, provided there is complete freedom and responsible Government there and the people really are in charge. If monarchical figure-heads are approved by the people of the State, of a particular State, whether I like it or not, I certainly will not like to interfere. So I wish to make it clear that so far as this Resolution or Declaration is concerned, it does not interfere in any way with any future work that this Constituent Assembly may do, with any future negotiations that it may undertake. Only in one sense, if you like, it limits our work, if you call that a limitation, i.e., we adhere to certain fundamental propositions which are laid down in this Declaration. Those fundamental propositions, I submit, are not controversial in any real sense of the word. Nobody challenges them in India and nobody ought to challenge them and if anybody does challenge, well, we accept that challenge and we hold our position. (*Applause*)

Well, Sir, we are going to make a constitution for India and it is obvious that what we are going to do in India, is going to have a powerful effect on the rest of the world, not only because a new free independent nation comes out into the arena of the world, but because of the very fact that India is such a country that by virtue, not only of her large size and population, but of her enormous resources and her ability to exploit those resources, she can immediately play an important and a vital part in world affairs.

Even today, on the verge of freedom as we are today, India has begun to play an important part in world affairs. Therefore, it is right that the framers of our Constitution should always bear this larger international aspect in mind.

We approach the world in a friendly way. We want to make friends with all countries. We want to make friends, in spite of the long history of conflict in the past, with England also. The House knows that recently I paid a visit to England. I was reluctant to go for reasons which the House knows well. But I went because of a personal request from the Prime Minister of Great Britain. I went and I met with courtesy everywhere. And yet at this psychological moment in India's history when we wanted, when we hungered for messages of cheer, friendship and co-operation from all over the world, and more especially from England, because of the past contact and conflict between us, unfortunately, I came back without any message of cheer, but with a large measure of disappointment. I hope that the new difficulties that have arisen, as every one knows, because of the recent statements made by the British Cabinet and by others in authority there, will not come in our way and that we shall yet succeed in going ahead with the co-operation of all of us here and those who have not come. It has been a blow to me, and it has hurt me that just at the moment when we are going to stride ahead, obstructions were placed in our way, new limitations were mentioned which had not been mentioned previously and new methods of procedure were suggested. I do not wish to challenge the *bona fides* of any person, but I wish to say that whatever the legal aspect of the thing might be, there are moments when law is a very feeble reed to rely upon, when we have to deal with a nation which is full of the passion for freedom. Most of us here during the past many years, for a generation or more, have often taken part in the struggle for India's freedom. We have gone through the valley of the shadow. We are used to it and, if necessity arises, we shall go through it again. (*Hear, hear.*) Nevertheless, through all this long period, we have thought of the time when we shall have an opportunity, not merely to struggle, not merely to destroy, but to construct and create. And now, when it appeared that the time was coming for constructive effort in a free India to which we looked forward with joy, fresh difficulties are placed in our way at such a moment. It shows that, whatever force might be behind all this, people who are able and clever and very intelligent, somehow lack the imaginative daring which should

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accompany great offices. For, if you have to deal with any people, you have to understand them imaginatively; you should understand them emotionally; and of course, you have also to understand them intellectually. One of the unfortunate legacies of the past has been that there has been no imagination in the understanding of the Indian problem. People have often indulged in, or have presumed to give us, advice, not realising that India, as she is constituted today, wants no one's advice and no one's imposition upon her. The only way to influence India is through friendship and co-operation and goodwill. Any attempt at imposition, the slightest trace of patronage, is resented and will be resented. (*Applause*) We have tried, I think honestly, in the last few months in spite of the difficulties that have faced us, to create an atmosphere of co-operation. We shall continue that endeavour. But I do very much fear that that atmosphere will be impaired if there is not sufficient and adequate response from others. Nevertheless, because we are bent on great tasks, I hope and trust that we shall continue that endeavour and I do hope that, if we continue, we shall succeed. Where we have to deal with our own countrymen, we must continue that endeavour even though in our opinion some countrymen of ours take a wrong path. For, after all, we have to work together in this country and we have inevitably to co-operate, if not today, tomorrow or the day after. Therefore, we have to avoid in the present anything which might create a new difficulty in the creation of that future which we are working for. Therefore, so far as our own countrymen are concerned, we must try our utmost to gain their co-operation in the largest measure. But, co-operation cannot mean the giving up of the fundamental ideals on which we have stood and on which we should stand. It is not co-operation to surrender everything that has given meaning to our lives. Apart from that, as I said, we seek the co-operation of England even at this stage which is full of suspicion of each other. We feel that if that co-operation is denied, that will be injurious to India, certainly to some extent, probably more so to England, and to some extent to the world at large. We have just come out of the World War and people talk vaguely and rather wildly of new wars to come. At such a moment this New India is taking birth—renascent, vital, fearless. Perhaps it is a suitable moment for this new birth to take place out of this turmoil in the world. But we have to be clear-eyed at this moment,—we, who have this heavy task of constitution-building. We have to think of this tremendous prospect of the present and the greater prospect of the future and not get lost in seeking small gains for this group or that. In this Constituent Assembly we are functioning on a world stage and the

eyes of the world are upon us and the eyes of our entire past are upon us. Our past is witness to what we are doing here and though the future is still unborn, the future too somehow looks at us. I think so, and so, I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon. Sir, I beg to move. (*Prolonged Cheers*)

(ii)

The Right Honourable Dr. Jayakar<sup>1</sup> (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawaharlal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now, seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death (*cheers*), Pandit Jawaharlal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went to the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of my supporting Mr. Churchill

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1. *Ibid*, January 16, 1946; Vol. I, pp. 71-81.

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by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last ten years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawaharlal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all power being derived from the people; minorities' rights fundamental rights—all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down any fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitutions have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut

out and limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must wait until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order, I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel, Sir, that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution, and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it, Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject? It is clear from the wording of his amendment. I invite your attention to the wording, Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order, under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.



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The Right Hon'ble Dr. M. R. Jayakar: Well. I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

"This assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberation of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union Constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have to get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that "representatives thus chosen," i.e., the Hindus, Muslims and the Negotiating Committee for the States. (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible." We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the "first" meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:



‘A preliminary meeting will be held at which (1) the general order of business will be decided (2) a Chairman and other officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up.....’

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

....The plea which I am urging is this. This Constituent Assembly, as it is formed today, is not complete. Two persons are absent. The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck.....

(iii)

Dr. Syama Prasad Mookherjee (Bengal: General):<sup>1</sup> Mr. Chairman, Sir, I believe, in the course of the chequered history of our country, we have often passed motions and resolutions from different political parties and platforms embodying our demands for an Independent Sovereign State for our motherland. But so far as today's Resolution is concerned, it has a deep and special significance. It is for the first time in the history of our country, since we came under British rule, that we have met to frame our own constitution. It is a great responsibility—in fact, as the Hon'ble the Mover of the Resolution reminded us, it is a solemn and sacred trust which we Indians have

1. December 17, 1946; *Ibid*, I pp. 95-99.

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agreed to perform and we propose to do so to the best of our ability. Now, Sir, the amendment which has been moved by Dr. Jayakar raises certain questions of fundamental importance. I am sorry I cannot support the amendment. The effect of the amendment practically is that we cannot pass a resolution of this description at all until the Sections have met and made their recommendations. Dr. Jayakar wants that we should not pass this Resolution until both the Indian States and the Muslim League are enabled to attend the Constituent Assembly. So far as the Indian States are concerned, they cannot come even if they wish to, until the Sections have met and settled the provincial constitutions, which means how many months none can foretell. So far as the Muslim League is concerned, no doubt, every one regrets that the Muslim League has not found it possible to attend the preliminary session of the Constituent Assembly. But what guarantee is there that, if this Resolution is postponed till the 20th January next, as Dr. Jayakar suggests, the Muslim League will come and attend the session?

I feel, Sir, that the question should really be looked at from a different point of view. Does this Resolution raise issues which are in any way inconsistent with the Cabinet Mission's Scheme of May the 16th? If it does raise issues which are inconsistent with that scheme, then obviously we are prejudging matters, we are raising matters which, it may be said, we have no right to do at this stage. Now, that document to my mind is something like a puzzle picture. You can interpret it in so many ways looking at it from different angles of vision. But looking at the Resolution as it stands, what is the declaration that it is making now? It enumerates certain fundamental things which are within the framework of the Scheme itself. I know that if we go into some details, I have to refer to at least one matter on which many of us hold divergent views, namely, the question of residuary powers. But that is a matter which the Cabinet Mission's Scheme has included within the contemplated framework of the Constitution. That is a matter on which the Indian National Congress has expressed its opinion; that is a matter, I believe, on which the Muslim League also has expressed its opinion. Some of us differ from that standpoint and urge a stronger Centre in India's paramount interest. We shall do so at an appropriate stage later on. Pandit Jawaharlal Nehru, as the mover of the Resolution, has also made it clear that we are not now framing a constitution for India; we are only passing a resolution at this stage, at the preliminary stage, outlining generally the shape that the future constitution of India should

take. In other words, when the time actually comes for us to frame the Constitution, I believe, Sir, it will be open to any one to bring up any matter that he chooses before the House as an amendment to any proposal that may be made and which is bound to be considered on its merits. The passing of this Resolution, I take it, can be no legal bar whatever against any member bringing forward any amendment to the draft Constitution that this Assembly may frame at a later stage. If assurances are forthcoming on these two issues, namely, that the Resolution as drafted does not go against the main features of the Cabinet Mission's Scheme, and also that it does not commit the Constituent Assembly in a definite manner with regard to the details of the Constitution that is yet to come, I see no reason why any obstacle should be put forward to passing the Resolution at this stage.

The Resolution has an importance of its own. After all, we are sitting here not in our individual capacity, but we claim to represent the people of this great land. Our sanction is not the British Parliament; our sanction is not the British Government; our sanction is the people of India. (*Cheers*) And if that is so, we have to say something, not merely to frame rules and regulations,—we have to say something concrete to the people of India as to why we have assembled here on the 9th December, 1946. If what Dr. Jayakar says had been the correct position, then this Constituent Assembly should not have been called at all; in fact, Dr. Jayakar need not have attended the meeting. He should have informed the Governor General,—“I regret I cannot accept your invitation because I feel you are doing wrong in calling the Constituent Assembly as the Muslim League and the Indian States are not attending.” But having come here, for us to raise this issue is practically to walk into the trap of the Muslim League and to strengthen the hands of reactionaries in Great Britain. I know that Dr. Jayakar will be the last man to do such a thing. I admire his courage of conviction; in fact, every one who feels that a certain thing should be done, must be able to come forward and present his viewpoint. But we may also respectfully point out to Dr. Jayakar the great danger that lies in the innocent-looking amendment that he has put forward before the House, and I hope that he will withdraw the amendment in due course when the time comes.

I would like just to say a few words with regard to another aspect of the question. The Resolution is there, but how are we going to implement it? What are the impediments that we already see before us which may prevent us from carrying this Resolution into effect? Now, one, of course, is the status of the Constituent Assembly in the absence of the Muslim League. Dr.

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Jayakar yesterday referred to some analogy of a dinner party. He said, "If guests are invited and some guests do not come, then how can you have the dinner party?" But he forgot to say what will be the fate of the guests who have already arrived. If he is going to be the host and invites six guests, suppose five of them come and one is absent, is he then going to starve those five guests of his and turn them out of his house and say, "The sixth has not come and you are not going to get your food"? Obviously not. Here also the hunger for freedom for those who have come has to be satisfied. Mr. Churchill said that the absence of the Muslim League in the Constituent Assembly was something like the absence of the bride in the Church when the marriage was going to take place. I do not know, when the Indian States come in and also the Muslim League, how many brides the Constituent Assembly is going to have ultimately. In any case, if that is Mr. Churchill's point of view, he should not play the role of a seducer. He should have asked Mr. Jinnah to go back to India and join the Constituent Assembly and place his point of view before the people of India. No one has said that the Muslim League should not come. In fact, we want that the Muslim League should come so that we can meet each other face to face. If there are difficulties, if there are differences of opinion, we do not wish that we should carry only by majority votes. That may have to be done as a last resort, but obviously, every attempt must be made, will be made, to come to an agreement as regards the future Constitution of India. But why is the Muslim League being prevented from coming? My charge is that the Muslim League is not coming because of the encouragement it receives from British attitude. The Muslim League has been encouraged to feel that if it does not come, it may be able to veto the final decision of the Constituent Assembly. The power of veto in some form or another has again passed into the hands of the Muslim League, and that is the danger that threatens the future activities of this great Assembly. Sir, I am not going to discuss in detail, because this is neither the time nor the occasion when I can discuss, the various provisions of the British statements. But, I would certainly say this: that this Constituent Assembly, although it is a British creation for the time being, once it has come into existence, it has the power, if it has the will, to assert its right and to do what is best and proper for the attainment of India's freedom, for the good of the people of India irrespective of caste, creed or community. (*Hear, hear.*)

Now, Sir, we have said, at any rate the Indian National Congress has said—because that was one of the major parties with whom negotiations went on—that they stand by the Cabinet Mis-

sion Scheme of May 16. It gladdened my heart yesterday when the Hon'ble Sardar Vallabhbhai Patel got up, interrupting Dr. Jayakar, and said that the Congress has not accepted anything beyond the Statement of May 16, 1946. (*Cheers*) That I consider to be an announcement of fundamental importance. We have got to make it clear as to what we are here for. I say that our attitude should be something like this: We shall give the Cabinet Mission Scheme of May 16, a chance; genuinely, honestly we shall see if we can come to an agreement with the other parties and elements on the basis of the Scheme of May 16, 1946. But subsequent interpretations, if any, we are not going to accept. Or if any party chooses to deviate from the Scheme and break away, we shall proceed and frame the Constitution as we wish.

There has been considerable difference of opinion with regard to one clause of the Statement of May 16, 1946, and that is with regard to the question of grouping. Now, it is for the Congress to decide, as one of the major parties involved, what interpretation it is going to accept ultimately. If the interpretation as given by His Majesty's Government is not accepted, and if the Congress considers that the interpretation put upon that portion of the Statement by it (the Congress) is correct, then of course a crisis may come. That is a question which has to be decided apart from a discussion on this Resolution. In fact, the greater the delay in making a decision on that question, the greater will be the atmosphere of unreality, so far as the proceedings of this House are concerned. But, after that question is decided, supposing the interpretation put by His Majesty's Government is accepted, whether by a reference to the Federal Court, or not, I need not go into, then we shall go on. We shall proceed with our work. The Muslim League may come or may not come. If it comes, well and good; and even if it does not come, it cannot retard India's freedom and we must claim to proceed with our business in this Constituent Assembly. I feel, Sir, that if a crisis does come, as I visualise it is likely to come, if our country is to be free, it is not going to be in accordance with constitutional means. In view of the developments that have taken place during the last few days, our task will not be performed so easily. But let me emphasise that whatever has to be done, it has to be done through the agency of this Constituent Assembly and none other. If ultimately we have to function, we shall function on our own responsibility and prepare a constitution which we shall be able to place before the bar of world opinion and satisfy everyone that we have treated the people of India, minorities and all, in a just and equitable manner.

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After all, what happened with regard to the South African question? We have today in our midst, the Hon'ble Mrs. Pandit, who has come back to her motherland after a great victory. But even there she was not supported by our self-constituted trustee—His Majesty's Government in Great Britain. In fact the vote went against India so far as Great Britain was concerned. But she won. The Indian Delegation won before the bar of world opinion. Similar may be the case with regard to the Constituent Assembly also. If we take courage in both hands and frame a constitution which will be just and equitable to all, then we shall be able, if need be, to declare this Constituent Assembly as the first Parliament of a Free and Sovereign Indian Republic. (*Loud cheers*) We then may be able to form our own National Government and enforce our decision on the people of this land. As I said a few minutes ago, our sanction is not the British people or the British Government. Our sanction is the people of India and therefore we have to make the ultimate appeal to the people of our country.

Sir, when we talk about minorities, it is suggested as if the Muslim League represents the only minority in India. But that is not so. There are other minorities. Coming from Bengal with all her tragic suffering, let me remind the House that Hindus also constitute a minority in at least four Provinces in India and, if minority rights are to be protected, such rights must affect every minority which may vary from Province to Province.

Only last night, Lord Simon made the startling announcement that the Constituent Assembly sitting in Delhi consists of only Caste Hindus. So many false statements have been uttered during the last few days in England that it is difficult to keep count of them all. But who are represented in this House today? There are Hindus; there are some Muslims too. At least there are Muslims from one Muslim province who come as representatives of a Government which is functioning there in spite of the Muslim League. There are the representatives of the Province of Assam which is supposed to be part and parcel of Mr. Jinnah's Pakistan-to-come. That Province is also officially represented by the majority of the people of that province. You have the Scheduled Castes. All the Scheduled Caste members who have been elected to the Constituent Assembly are here. Even Dr. Ambedkar who may not agree with us in all matters is present here (*applause*), and I take it, it will be possible for us to convert him, or reconvert him and to get him to our side (*renewed applause*), when we go to discuss in detail the interests of those whom he represents. There are other Scheduled Caste members also present here. The Sikhs are present here; all of them. The Anglo-Indians are present and

so are the Indian Christians. So, how did it lie in the mouth of Lord Simon.....(*A voice: "Parsees also are present here"*) Yes, last but not least, the Parsees also are present here. So, how did it lie in the mouth of Lord Simon or anybody else ... (*A voice: "The Tribal representatives are here"*). Tribal areas and the Adibasis are here represented by my friend Mr. J. Singh. In fact, every element that has been elected to the Indian Constituent Assembly is here barring the Muslim League. The Muslim League represents a section. I take it a large section, may be a very large section of the Muslim community, but it is absolutely false to suggest that this Constituent Assembly consists only of one section of the people, the Caste Hindus, as though Caste Hindus have been born only to oppress the others and to fashion out something which will be disastrous to the interests of India. Now, is it suggested that if one section of the Indian people chooses to be absent from the Constituent Assembly, India should continue to remain a slave country? (*A Voice: "No"*) That reply has to be given to the people of this country who are absent and also their instigators. I would say, Sir, that we should say to the British people once and for all, "We want to remain friendly with you. You started your career in this country as traders. You came here as supplicants before the Great Mughal. You wanted to exploit the wealth of this country. Luck was in your favour. By forgery, fraud and force, you succeeded in establishing—these are all matters of history—your Government in this country, but not with the willing co-operation of the people of this land. You introduced separate electorates, you introduced religion into Indian politics. That was not done by Indians. You did it, only to perpetuate your rule in this country. You have created vested interests in this country which have become powerful enough now and which cannot be destroyed with their own willing co-operation. In spite of all these, if you really want that you and India should remain as friends in the future, we are prepared to accept your hand of co-operation. But, for heaven's sake, it is not the business of the British Government to interfere so far as the domestic problems of India are concerned. Every country will have its own domestic problems and unfortunately India has her domestic problems too, and those domestic problems must ultimately be settled by the people of this country." I hope, Sir, as we are not framing a constitution now, as we are only laying down a general outline of the things that we want to do in the future, the House will refuse to listen to narrow technicalities. We shall go ahead with



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our work in spite of all difficulties and obstacles and help to create that great India, united and strong, which will be the motherland of not this community or that, not this class or that, but of every person, man, woman and child, inhabiting this great land, irrespective of race, caste, creed or community, where everyone will have an equal opportunity, and equal freedom, an equal status so that he or she could develop himself or herself to the best of his or her talents and serve faithfully and fearlessly this beloved common motherland of ours.

(iv)

Dr. B. R. Ambedkar (Bengal: General):<sup>1</sup> Mr. Chairman the Resolution, in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Rights of Man and the principles which are embodied in it have become part and parcel of our mental make-up. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim them as forming a part of our creed. The Resolution suffers from certain other lacunae. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are

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1. *Ibid.*, I., 17 Dec. 1946, pp. 99-103.



nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without the due process of law finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economic, social and political. If this Resolution has reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms, that in order that there may be social and economic justice in this country, there would be nationalisation of industry and nationalisation of land. I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.

Now I come to the first part of the Resolution which includes the first four paragraphs. As I said, from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centred on the use of that word 'Republic'. It is centred on the sentence occurring in paragraph 4 "the sovereignty is derived from the people." Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know today we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (Applause) With all our castes and creeds, I have

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not the slightest hesitation that we shall in some form be a united people. (*Cheers*) I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even for them. (*Loud cheers and applause.*)

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us in marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar, who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended

to bring about the result or not, whether it is a result of cold calculation or whether it is mere matter of accident is bound to have the result of keeping the Muslim League out. In this connection, I should like to invite your attention to paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive of the Constituent Assembly to frame a constitution in terms of para. 3 of the Resolution. What does para. 3 say? Para. 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para in the light of the Cabinet Mission's Statement or reading it even in the light of the Resolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping. (*Hear, hear*) I like a strong united Centre (*hear, hear*), much stronger than the Centre we had created under the Government of India Act of 1935. But, Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself, consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration, and which. I must say, was to me a matter of great admiration and respect and refuge.....

(v)

The Hon'ble Rev. J.J.M. Nichols-Roy (Assam: General):<sup>1</sup> Mr. President, Sir, thank you for giving me this opportunity to speak on this Resolution. I stand here to support the Resolution moved by Pandit Nehru, with all the force that I can command. This Resolution contains all the principles that need to be enunciated in such a kind of Resolution to be placed before this House. First of all.

1. *Ibid*, I., 18 Dec. 1946, p. 113.

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it has stated the objective that we all in India have in our minds, that is, to proclaim at a certain date the independence of India. Here we have only resolved that we shall proclaim the independence of India and we have that firm resolve in our minds to get the independence of India. That is the desire of every one in India. I cannot imagine that there will be anybody in India from one end of India to the other end, who will be against that kind of objective. Then it proclaims also that the kind of Constitution that we shall make will be a republican form of Government,—a democratic form of Government,—a Government by the people and for the people. That is surely the desire of all the people of India. It is true that there are some monarchies in India but we envisage the time when all these monarchies will become at least wholly constitutional monarchies like the Monarchy of England, and we believe that even the people of all the States envisage that in their own States there will be a democratic form of Government. Therefore there can be no objection at all to these declarations that we have in this Resolution. Then it speaks of the territories which will be included in the Union of India and it is comprehensive enough. Then in the third para it speaks of autonomous units—that those autonomous units which are now autonomous according to present boundaries or with such other boundaries as they may have afterwards—these units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous. In this connection, Sir, I want to say that it is very unfortunate that the idea of Sections was introduced in the Cabinet Mission Declaration and that in a Section according to the latest interpretation given by His Majesty's Government a certain Province will be outvoted by the majority of members of another Province. I speak especially in connection with Section 'C' which relates to Assam: Assam is a non-Muslim Province. There are 7 non-Muslims who are representatives of Assam in this Constituent Assembly and 3 are Muslims. I am sorry that my Muslim friends are not present here, in this Assembly. I wish they were here. In Bengal, Sir, there are 27 non-Muslims and 33 Muslims. If we are brought into a Section, there will be 36 Muslims and 34 non-Muslims and if the voting in that Section will be by a majority vote, a simple majority vote as interpreted by His Majesty's Government, it will mean that our Constitution, our Assam Constitution, will be framed by the majority of the people of Bengal, that is the Muslim League. We can-

not conceive of anything that is so unjust as this, Sir. (*Cheers*) It is a matter which should be considered by all the members of this Constituent Assembly. When the Cabinet Mission made its Declaration, we in Assam thought that such kind of interpretation might be given in the future but we took it for granted that the Cabinet Mission would not be so unreasonable as to place Assam which is a non-Muslim Province to come under a Muslim Province and that our constitution would be framed by the majority of the members in the Section. We never thought that it would be like that, because we considered that it is unjust for the people of Assam to be placed in such a position. In the month of June 1946 we had a public meeting in Shillong. I happened to be the Chairman of that meeting. We were discussing about the Declaration of the Cabinet Mission and in that meeting I said this:—

“From this paragraph 15 (V) of the Cabinet Mission’s Declaration I understand that each Province has freedom to form or not into a group suggested by the Cabinet Mission. Secondly, that the grouping will be, as independent provinces, to discuss what subjects could be taken as common subjects to be dealt with by the group. Thirdly, that if a province does not agree in regard to subjects which may affect it vitally, there will be no group constitution as recommended by para 19 (V) of the Declaration. Fourthly, that if one province, in the discussion, finds it impossible to settle the question in the group, it will not be forced by a majority vote of the members of another Province. Fifthly, that the whole question will be brought before the whole Constituent Assembly which will have the power to decide finally.”

That is what we understood by the Declaration of the Cabinet Mission, and, I believe, Sir, that was also the view which the Congress took at that time. I was very much gladdened by the declaration of Sardar Vallabhbhai Patel the other day that the Congress had not up to the present time accepted the interpretation of His Majesty’s Government. Sir, we still hold that position. It appears to me that the British Cabinet Mission has changed its mentality from what it was when they were here in India. When they were in India they were under certain circumstances and were influenced by the opinion at that time in this country. When they have gone back to England they are placed under a different circumstance, influenced by the Conservative Party there, and the force which Mr. Jinnah has placed upon their minds. They have changed their opinion altogether. That is what appears to me. I would like to know from Lord Pethick-Lawrence whether in reality there

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was that idea in the minds of the Cabinet Mission when they were here in India. There was nothing in any of their declarations, in any of their writings, that said that the vote in the Sections would be by a simple majority vote. The principle of driving by force a non-Muslim province to come under a Muslim province is absolutely wrong. Mr. Jinnah has forced his Majesty's Government to commit this great injustice to our Province, and we feel, Sir, that we shall have the sympathy and support of this august body, that our Province may not be driven to that pitiable condition. I want Mr. Jinnah and the League Members to be here and I want them to come here to take part in the framing of the Constitution of India. I will expect him and all the others to be just. I do not want anything else except that they will act like gentlemen and be just. It is unjust, everybody knows, that we should be forced into such a position in which we are now placed by the recent interpretation of His Majesty's Government. We are an autonomous province and a non-Muslim province. Why should we be forced to go to that kind of a Section which could outvote the province of Assam and frame the Constitution according to the desire of the majority, created artificially. Now, Sir, it may be said that this will at once bring a conflict between the British Government and this Constituent Assembly. This need not be. Someone said to deviate from the four walls of the Declaration of May 16th and to give a different interpretation would be revolutionary. This Constituent Assembly need not adopt that attitude at all. I believe that we can adopt a friendly attitude. We shall say to the British Government: "We thank you for the good effort you made to bring a compromise between the Hindus and the Muslims. You have given to us good advice and made good recommendations. You have acted as makers of peace. We shall, as far as practicable, implement your recommendations, but we shall, like responsible persons, be free to deviate from them whenever we find it is impracticable and unjust to carry out literally to the letter any of your recommendations. We shall frame a constitution which will do justice to all minorities and which shall not overlook any community. If the members of the Muslim League will co-operate, we shall heartily welcome them. After we have finished framing the constitution, the whole of India will get the opportunity to see what kind of constitution this Constituent Assembly has framed; we request you, British gentlemen, not to make speeches in Parliament which will suggest revolutionary activities in India. Kindly co-operate with us quietly until we finish our work, and then judge our work." Then only the British Government will have the opportunity to see what kind of a constitution this Assembly

has framed. Then, and not till then, can they say that this Constituent Assembly has been just or unjust to a certain community or to the Muslims. We do expect that the Muslim community will come here and co-operate in framing the Constitution of India. There is no one who wishes their attendance here more than I do. I have some very good friends of mine among the members of the Muslim League and I would like to see them come here and co-operate with this Assembly.

I now turn to another portion of this Resolution, namely, paragraph 5 and before I do that, I must point out another thing. I envisage that in the autonomous Provinces there will be units in a Province which will be self-governing and which will be connected with a Province. This will be necessary no doubt, in a Province like Assam.

Now, to turn to paragraph 5. In this paragraph we have provisions regarding justice and freedom,—social justice, justice in the economic and political field, ensured to all. Political justice, no doubt, will mean that every community will get representation in the legislatures as well as in the administration of the country. Therefore, there need be no fear in the mind of any community that this Constituent Assembly will not look after their interests.

Then there is mention, here, of the freedom of thought, expression, belief, faith and worship. There was a propaganda made in this country by some parties that when there will be self-government in India, some religious faiths will not be allowed to propagate their faith. This is really false propaganda. This Resolution has declared that this will not be the case. There will be provision in the Constitution of India for the freedom of all religious faiths and for the propagation of those faiths according to their own desire. I am particularly glad that this para. speaks of association and action, subject to law and public morality. Public morality needs to be protected by Government and righteousness needs to be exalted. "Righteousness exalteth a nation, but sin is a reproach to any people".

I would like to speak on other points of this Resolution, but I don't think I need dwell on them at all. There are difficulties and hindrances before us. India is not an exception to difficulties of this nature; such difficulties confronted Canada, Australia and even the United States when they were engaged in the work of framing their constitutions, and some parts of those countries did not come



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into the constitution at the beginning, although they came in afterwards. That very same thing may be repeated here in India. We shall have to go on framing the constitution and then when that is placed before the world and before this country, it will then and then only be the proper time for the people of England or the British Government to say that it is not a constitution according to their Declaration. Before that happens, they should not try to prejudge what this Constituent Assembly will do and thus cause obstruction to its work.

Mr. Chairman: The Hon'ble Member has exceeded his time.

The Hon'ble Rev. J.J.M. Nichols-Roy: I want to speak on only one more point, which has impressed me from the speech of Viscount Simon in the House of Lords. Viscount Simon has said that this Constituent Assembly, if it carries on the work of framing a constitution for India, will "threaten" India "with a Hindu Raj". I was very much surprised when I saw these words in a newspaper this morning. When I was in western countries—in England and also America—I was impressed by the fact that some people in those countries had an idea that a Hindu is a man who is steeped in his caste system and who worships a cow. If this is the idea which Viscount Simon has when he refers to a Hindu Raj, i.e., that the people of India will be forced to perpetuate the caste system and to worship a cow, then he is entirely wrong. If the people who are assembled here—whether they be Hindus, Muslims, or Christians, or whatever other religion they may profess—if they frame a constitution which will be a democratic constitution, which will do justice to everybody, why should that constitution be called a Hindu Raj? And if by 'Hindu' is meant people who live in India, surely we should have a constitution for the people of India. That is exactly what we want: we want a constitution to be made by the people of India, but if some people in India do not want to come into the constitution just now, they will come afterwards and I envisage a time when they will all enter into this constitution and make India one country—one united country—with a democratic form of government. I have faith that all these hindrances will be removed by prayer to God. Let us follow the example of Mahatma Gandhi—our Bapuji—and pray to God. Let us pray to God that all these hindrances may be removed from our way and that we may be able to carry on the work of framing a constitution which will be a blessing to our whole country.



The Hon'ble Pandit Hriday Nath Kunzru (U.P. General):<sup>1</sup> Mr. Chairman, judging from some of the speeches delivered in this House, it seems that the amendment before the House has been treated by some speakers as having been inspired by a spirit of hostility. As I view it, however, its object is not to obstruct but to facilitate the work of this Assembly. Its purpose is to create an atmosphere which will enable us to realise rapidly and smoothly the great aim that we have set before ourselves. I think I shall not be far wrong in saying that there are men in every part of the House who sympathise with the amendment moved by Dr. Jayakar. This very fact should suffice to convince every unprejudiced man that the object of the amendment is not to place unnecessary obstacles in our way but to pave the way to certain success. I go further and say that if the newspaper reports are correct that the next session of the Assembly will take place towards the end of January, it shows that the House feels that it ought to postpone the decision of important questions for a while on psychological grounds. The object of such a move can only be to assure all those whose interests are affected by any decisions that we may take that they will have an opportunity of expressing their views before those decisions are taken. I congratulate all those who are responsible for this decision. It is wise on our part to make every section of the people in India realise that we do not want to impose our will on any party or community, but that such decisions as we may arrive at will be the result of joint discussion carried on with the sole object of enabling India to achieve her independence and protecting the just rights of the minorities and the backward classes. This amendment seeks to do nothing more than those who are responsible for the decision that I have already referred to. It only pleads for that comprehension for which Sir Radhakrishnan pleaded so eloquently in his stirring address and which he said was one of the dominant characteristics of the ancient civilization of India.

Sir, Dr. Syama Prasad Mookherjee asked us yesterday whether, if the view embodied in the amendment is accepted by the House, it will be able to do anything for a long while. Would it, for instance, be able to do anything till the representatives of the States were able to take part in the drafting of the Union Constitution? I do not personally think that this objection has any force. If the object on which stress is laid in the Resolution before the House is to be realised, it is obvious that it can be realised in a large

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1. *Ibid*, I, 18th December, 1946, Pp. 122-125.

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measure only by the Union Constituent Assembly which will draw up the constitution of the Union.

The resolution may, in some measure, give a lead to the Section Committees; but even Section Committees are hardly likely to meet before April or May next. In any case the principal body whose work will be guided by the directive embodied in this resolution will be the Union Constituent Assembly and it will meet only after the Section Committees have done their work. It is obvious, therefore, that a postponement of the discussion of Pandit Jawaharlal Nehru's resolution will not retard the work of the Assembly in the slightest measure. Since its main purpose is to guide the deliberations of the Union Constituent Assembly, no harm will be done if its discussion is postponed for a while so that we may enable all those sections whose interests are affected by the resolution to have an opportunity of expressing their views. Some of the States representatives have already protested against the immediate acceptance of the resolution by this Assembly. Their views may be right or wrong. We are not in the slightest degree concerned with this. What ought to concern us is that if the resolution is passed immediately, it will be a unilateral decision. The House will have ample opportunity later of affirming the objectives outlined in the resolution. There need be no fear that postponement of the resolution would mean the torpedoing of the purposes embodied in it. Indeed, I feel that a slight delay will strengthen our hands in dealing with this important subject.

Sir, there is another question of considerable importance which Dr. Syama Prasad Mookherjee put to us yesterday. He asked us whether we accepted the position that unless the Muslims agreed to participate in the work of the Assembly, nothing should be done. I fear that the real reason for the opposition to the amendment is this feeling voiced by Dr. Syama Prasad Mookherjee that any postponement of the resolution would bring the work of the Assembly to a standstill. Dr. Mookherjee rhetorically asked Dr. Jayakar why, holding the views that he does, he agreed at all to join the Constituent Assembly at this time. I think, Sir, that it would have been most unwise to lend any countenance to those who desired that the convocation of the Assembly should be indefinitely postponed. We have, I think, achieved a great deal by compelling the Viceroy to adhere to the date originally fixed for convening the Assembly. Had the Assembly not been convened, its future would have depended on the discretion of the executive. That discretion has, however, now passed out of the hands of the Viceroy or even the British Government. It now rests with this House

and with you, Sir, as to when its next session should take place, or how and by what stages its work should be brought to a completion. As regards, Sir, the question whether this Assembly can do anything in the absence of Muslims, my reply to it will be very brief. It has been supposed by a good many speakers that if we admit the right of the Muslim League and the Indian States to participate in the discussion of the resolution before us, we shall be giving them absolute power to block the work of the Assembly. I think this shows a misapprehension of the existing position. Judging from the speeches delivered in the House of Commons and the House of Lords by the spokesmen of the British Government all that the British Government desire is that there should be agreement with regard to the procedure to be followed regarding the formation of Provincial Constitutions and groups. The interpretation of para 19 of the Statement of May 16 is the only point at issue. I understand that the matter will soon be referred to the Federal Court. I hope therefore that the way will soon be open for the participation of the Muslim League, in the Constituent Assembly. If, however, this is not the only ground on which the League is abstaining from joining the Assembly, and if, even after agreement has been arrived at with regard to the procedure to be followed by Section Committees, the League representatives refuse to come here, I do not think that they will be entitled to ask that the proceedings of this Assembly should be adjourned *sine die*.

The last para of the Statement issued by the Cabinet on 6th December has created a good deal of apprehension. In the present political situation it is obvious that it might be taken advantage of by those in whose interest it might be to prevent this Assembly from functioning properly. But on the whole it seems to me that the speeches delivered in the House of Commons and House of Lords disclose no such sinister intention on the part of the Labour Government. If the Muslims insisted on any condition not contained in the Statement of May 16th, I agree with Sardar Vallabhbhai Patel that we should refuse to agree to it. We cannot allow ourselves to be frustrated by the intransigence of any party. We are prepared to take into account all its reasonable demands but we cannot agree, in any circumstances, to allow it to decide the fate of this Assembly. Should such a situation unfortunately present itself, we shall be entitled to remind the British Government of Mr. Attlee's promise that the minorities will not be allowed to veto the progress of the country. The Secretary of State for India has himself reiterated this pledge. We need therefore have no fear that, if the Muslim League representatives refused to attend the Assembly even after agreement had been arrived at with re-

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gard to the interpretation of paragraph 19 of the Statement of May 16th, their intransigence will be allowed to hold up the work of the Assembly. Sir, for these reasons, I give my hearty support to the amendment that is before us. My support, however, should not be misunderstood as implying that I am in favour of the clause in the Statement of May 16th which relates to grouping. I personally see no reason why any province should be compelled to enter a group. I see in particular no justification whatsoever for compelling Assam to form a common Government with Bengal for any purpose. What has happened in Noakhali and which has led to the deplorable events that recently occurred in Bihar has justifiably increased the apprehensions of the people of Assam. But grouping, as the Cabinet Mission have here been pointing out almost since the very day on which their statement was issued, is an essential feature of their plan. Without agreement on this point, they assert, the Assembly will not enjoy that moral authority which a gathering of this kind ought to. This is not satisfactory from our point of view but we shall be able to deal with the position of the Provinces that are compelled against their wish to become members of a group later on when the reports of the Section Committees are before us. I repeat, Sir, with all the strength that I can command that the insistence of the British Government on driving unwilling Provinces into groups is morally speaking completely unjustified. But as I have already said before, we shall have time to consider the Constitution as it emerges from the Section Committees and the Union Constituent Assembly later on.

For the time being, Sir, we are only concerned with the question whether the discussion of this Resolution should be proceeded with immediately and whether any harm would be done if it were postponed. I have shown that no harm whatsoever will be done if we waited till the representatives of the Muslim League and the States are able to participate in the discussion of this important question. Even if we pass this Resolution now, shall we morally be able to say 'no' to the representatives of these interests, should they ask us later on that the fundamental questions to which the Assembly might assent by passing this Resolution should be reconsidered. I am sure, Sir, that should such a position arise we shall not find it in our hearts to refuse the request of the Muslim League representatives and the Indian States.

One word more, Sir, and I have done. There are plenty of difficulties in our way, both in India and in England. There are still men like Lord Linlithgow who think that British authority can

be re-asserted in India. They are suffering from a dangerous delusion. If England allows itself to be guided by such men, it will be confronted with a far more serious position than any that she has been faced with during the last 25 years. It may for a while, and only for a while, be able to keep India down by force but it will not be able to govern it even for a day. I am sure that the Labour Government realizes this and has no intention of accepting the advice given to it by men like Mr. Churchill and Lord Linlithgow or even by men like Lord Simon who are Conservatives in the guise of Liberals. Nevertheless, Sir, in view of the difficulties, both internal and external, which we have to overcome it will be wise on our part to act in such a way as to add to the moral authority of this Assembly. We have plenty of friends not merely in this country but in England. Let us proceed in such a way as to strengthen their hands. Let us not think of what we are entitled to do under the terms of the Statement of May 16th. Rather let us think of what it is in our interest to do on this important occasion. We may consider ourselves completely justified in passing Pandit Jawaharlal Nehru's Resolution but of what use will it be for us to exercise our rights if they only add to that discontent and unrest which is our desire to allay? I hope, therefore, Sir, that we shall act in such a way that India may, with the assent of all sections of the people—and if that unfortunately is not forthcoming—with the assent of all those who accept the right of the country to move forward, be able to march rapidly towards the aim that we have set before ourselves, viz., that of freedom and unity. (*Cheers*)

(vii)

The Hon'ble Diwan Bahadur Sir N. Gopalaswamy Ayyangar (Madras: General):<sup>1</sup> Mr. President, Sir, I have come forward to support the Resolution and I would add that I have come forward to urge with all the strength in my power that this Resolution be pushed to its conclusion at these sittings (*Cheers*). Sir, my respect for Dr. Jayakar and Pandit Kunzru is very great. I have considered with very great care all that they have said in support of this amendment proposing an adjournment of this discussion until the representatives of the Muslim League and the representatives of the Indian States have joined us. There is only one complaint I have to make against this motion for adjournment. I consider, Sir, that it lacks imagination. I say so without disrespect to my friends. I say it lacks imagination because it forgets that we have just launched ourselves on a very big task and it is necessary

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1. C.A.D.I. 18th December, 1946, Pp. 125-130.

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that we should impress our country and the world that we mean business.

Now, Sir, look at this Resolution. It is a Resolution which sets out the objectives that we have to place before ourselves in framing our constitution. Is such Resolution to be postponed till we reach the last stage of our work in this Assembly? Is it not a Resolution which must preface everything that we propose to do in this Assembly? That, I think, Sir, is a complete answer to this motion for adjournment. The mover and supporters of the amendment have urged reasons for postponing the consideration of this Resolution, but in doing so they have themselves admitted that there is nothing in this Resolution to which either of them is prepared to take exception. I appeal to them, Sir, that if they believe in this Resolution they must pass it at this series of sittings and before we commence real business and not postpone it till we have practically completed all our business. I know that Dr. Jayakar, towards the close of his speech, suggested that consideration of this Resolution might be postponed only for about a month or so by the end of which he hoped that the representatives of the Muslim League would have joined us. But what about the representatives of the Indian States? For no fault of this Constituent Assembly, the representatives of the Indian States have not come into this Assembly at the start, as I consider it is their right to do. But the procedure has been so regulated that they come in only at the final sitting of this Constituent Assembly. Are we to wait for them, and after all, the most vocal objection to this Resolution that has come from outside this House has come from people who represent the Indian States.

Now, taking the representatives of the Muslim League themselves, are we doing any injustice to them in proceeding with this Resolution? Their main objection to what we are doing today is the different interpretation they have put upon the clause relating to grouping. We are not discussing grouping. We are discussing this Resolution which lays down the objectives of our work—a matter in respect of which they have a perfect right to come and participate in this debate. What prevents them from coming and taking their seats here and debating with us here the other questions that we are taking up as a preliminary to the more important work that will follow? Their main objection will arise only when this Assembly, towards the end of the first session, proposes to split into Sections, and as I shall show in a minute, Sir, it is quite possible for them to raise all the issues that they want to raise at that stage. (*Hear, hear*)

Now, Sir, the question as regards grouping has entered a new phase with the Statement made by His Majesty's Government on the 6th of this month, but I would not go into the merits of what they have said in that Statement. The only thing I would say is that it is a most astonishing Statement to be made by so august a body as His Majesty's Government at this stage of the controversy. Be that as it may, I do not intend to go into its merits. Now, let us see what flows from that Statement. His Majesty's Government have said that their interpretation of the Cabinet Mission Plan and the interpretation of the Muslim League agree, but they say: "Since you have agreed to refer the matter to the Federal Court, or since you say that the Constituent Assembly will do so, you may do so." And then, we have the statement of Lord Pethick-Lawrence made only yesterday, clinching the matter by saying: "His Majesty's Government would not budge an inch from their position even if you appeal to the Federal Court." Now, Sir, what is the position? If we go to the Federal Court and the Federal Court gives a decision in favour of the view taken by the Congress, the Muslim League has categorically stated that it would not accept it. His Majesty's Government say they would not budge an inch from their own view of the matter. Of course it is not within the jurisdiction of His Majesty's Government, in my opinion, to say whether they would accept the Federal Court's view or whether they would not, because it is entirely out of their hands. The Constituent Assembly makes the reference to the Federal Court and it is for the Constituent Assembly to say before it makes the reference that it will abide by the decision of the Federal Court. What will happen then? Assuming that the Federal Court's decision is in favour of the view taken by His Majesty's Government, what will be the position of those who have taken a contrary view? The only thing they can do, in view of all the commitments they have made to individual Provinces and communities, is to move this Assembly for a modification of paragraph 19, which would more clearly express their view. The main difficulty is the method of voting in the Sections as the Secretary of State said in the House of Lords. If you leave paragraph 19(v) as it is, it is certainly an arguable point that in the absence of any modification of the wording of that clause the voting must be by individuals and a simple majority would decide the question. It is certainly an arguable point. If we want that voting should be by provinces, it is necessary that we should propose a modification of that clause, and that modification can, I think, be done by this Assembly on a motion properly made. Now, are we going to do that? I suggest that, in view of what has come from His Majesty's Government both in the Statement of December



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the 6th and in the speeches made in the two Houses of Parliament—I suggest that, in the new circumstances that have been created, the wiser thing to do is not to send a reference to the Federal Court but to take the other course which I have indicated, namely, that you bring up a resolution in this Constituent Assembly proposing a modification of clause 19(v) which will provide that the method of voting should be by provinces in the Section so far as the grouping matter is concerned.

Mr. Dharendra Nath Datta: Please save us from such prayerful resolutions!

The Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar: The Resolution I am suggesting is to be moved in this Assembly; we are to take a decision on it. It is quite possible—and I think it would be an arguable position—for the Muslim League representatives to come here and raise the question that such a modification involves a major communal issue. If you decide, Sir, it is a major communal issue, or, if after obtaining the advice of the Federal Court, you decide that it involves a major communal issue, it will be open to the Muslim League to contend that you cannot carry out that modification without a majority of each of the major communities. Why, I ask, should we not take that step? We shall take that resolution into consideration at an adjourned sitting of this Assembly, even those who have not presented their credential and signed the Register—the members of the Muslim League—that we shall consider and move a resolution of that sort. That must be a sufficient indication to them to come and occupy their places in this Assembly and defeat what they consider to be an unconscionable suggestion from the other side. That is one point I wish to suggest to those who may have to take a decision in this matter. Going to the Federal Court is absolutely useless, and so far as I can see, it will solve none of our troubles.

Then, on this main issue of adjournment, I do not propose to deal with the point of law that my Hon'ble Friend, Dr. Jayakar, took. I should like only to refer to some of the other criticisms that have been received. Before proceeding to that I should only like to suggest that, in considering points of interpretation of the document, namely, the Statement of May 16, let us not forget that we are not working under a provincial enactment or as members of a provincial legislature, or of the Central Legislature working under a Statute of Parliament. We are in a Constituent Assembly, and whatever is not said in the document under which we have gathered here, is not prohibited to us. We have the residuary powers in full



for accomplishing the task which we have undertaken. (*Hear, hear*) That being so, what I would suggest is that we should not rivet our eyes to particular clauses in this document and say, "this is not said in this particular clause, that is not said in the other clause, and therefore we cannot do anything which is not said in those clauses." I think whatever is not said but is necessary for the accomplishment of our task, is within our powers to regulate.

I will leave the rest of the objections to the consideration of this Resolution on the point of law to people who can deal with legal matters more efficiently than I can. I desire in the few minutes that still remain to me to deal only with the objections that have been raised on behalf of the States. There are mainly three objections that, on behalf of the Chamber of Princes, have been made public. The first is that the Resolution is objectionable because it is proposed to be considered and passed in the absence of the States representatives. Well, Sir, that I have dealt with already. The second is to the use of the words "Independent Sovereign Republic". I do not propose to occupy your time in dealing with that matter as it has been dealt with already by other speakers. I should like to deal a little more fully with the third objection to clause (4) of this Resolution. This clause says:

"Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people."

Exception has been taken to this in a statement issued by a distinguished Indian who has a right, I think, to speak on behalf of the Rulers of Indian States, in any case of some of them. He says:

"Such a doctrine may or may not be incontestable, but there is no point in taking it for granted in Indian India, especially when we remember that in legal theory this doctrine is only imperfectly applicable even in England."

I do not propose to undertake an examination of this doctrine in relation to legal theory. I would rather confine myself to its constitutional aspects. It is definitely incontestable that in spite of a hereditary monarch as head of the State from whom, in the forms of law, all authority is supposed to flow, the substance of real power and authority in England is derived from the people.

Now, what is the case in Indian States? I would only quote from two documents which have the authority of committees established in the two most important Indian States. The first is from Mysore and is from a document which was published nearly a

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quarter of a century ago. This is what is said in that Reforms Report:

“In such a polity, the head of the State, whether a hereditary ruler or an elected President, exercises, as representing the people’s sovereignty, a double prerogative, namely, one, in the sphere of legislation, the prerogative of ratification including the veto, and secondly, in the sphere of executive Government, the prerogative of creating and uncreating the organ of Government, namely, the Ministry. And both these prerogatives are exercised much more fully, really and substantially than by the constitutional head of a limited Monarchy under responsible Government.”

Then, here is an extract from a Report of a Committee on Reforms in Hyderabad:

“The British Constitution has grown out of England’s long history and is the result of centuries of strenuous struggle between its King and its Parliament. There, the two-party system, sustained by the spirit of compromise and the conception of the sovereignty of the people, has struck deep roots into the soil. The peculiarity, on the other hand, of the Indian States is this: The Head of the State represents the people directly in his own person and, his connection with them, therefore, is more natural and binding than that of any passing elected representatives. He is both the supreme head of the State and the embodiment of the people’s sovereignty. Hence it is that, in such a polity, the head of the State not merely retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make and unmake his executive or change the machinery of Government through which he meets the growing needs of his people.”

Those two views of where the sovereignty rests in Indian States tally. The hereditary ruler is supposed to embody in his person the sovereignty of the people, but, in actual fact, he has exercised the sovereign powers in disregard of the people’s interest in several cases.

The Cabinet Mission stated that, on the conclusion of the labours of the Constituent Assembly and on the framing of a constitution for India, His Majesty’s Government will recommend to Parliament, such action as may be necessary for the cession of sove-

reignty to the Indian people. Even under existing conditions, the Provinces of British India and Indian States have a common Centre which administers such subjects as, under any unitary or federal constitution for India as a whole, must stand ceded to the Centre. Broadly speaking, sovereign powers over India as a whole now vest in His Majesty, subject to the provisions of the Government of India Act, 1935. Those powers are exercisable both over British India and over Indian States, though the quantum of those powers and the manner of their exercise differ in the two cases. The act of ceding sovereignty, that is transfer of the power which Britain now wields in this country will, therefore, relate to the whole of India. When the Cabinet Mission therefore spoke of cession to the people of India, they must be held to have included the people of Indian States also. (*Hear, hear.*) The Mission's statement, therefore, that when British power is withdrawn, the States become independent, should be construed to mean that such sovereignty as His Majesty in fact exercises over Indian States will stand ceded back to the people of those States.

In this connection it is significant that paragraph 5 of the Memorandum on States, Treaties and Paramountcy Rights issued on 20th May, 1946, which deals with the extinction of paramountcy, speaks throughout only of the Indian States and not merely of their rulers. The rulers of States have, however, up to date, both claimed and exercised full internal sovereignty in their States subject only to the politically inescapable limits set by the paramountcy of the British Crown. The paramountcy of the British Crown really means suzerainty, in other words, the ultimate sovereignty of the British Crown in certain matters. In the assertion of this claim, the rulers have throughout ignored the idea of any sovereign powers vested in the people of the States. They have claimed to exercise both the ordinary legislative power and the constituent power within the sphere in which they claim sovereignty, and any constitutional powers which the people of certain States exercise through their representatives have been a matter of gift from the rulers to them.

Now, this feature of the relations between the ruler and the people in the States is absolutely inconsistent with the idea underlying the framing of a constitution by a Constituent Assembly consisting of representatives of the people in whom the constituent power is deemed to vest. When the cession of sovereignty from His Majesty to the Indian people takes place, the people of the States will, together with the people of what is now British India, be entitled to exercise sovereign powers in respect of the subjects

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assigned to an All-India Union Government. The exercise of the sovereign powers as regards the subjects vested in Provinces will be in the hands of the representatives of the Provinces in the case of the subjects retained by them and, by the people in the groups, if any, to whom any provincial subjects might have been assigned by the Provinces. This is fairly clear.

The Resolution that is now under consideration puts the Indian States on the same level in regard to the subjects not ceded by them to the Union Centre as the Provinces are in respect of provincial subjects; that is to say, it asserts that all the power and authority of Indian States as constituent parts of the sovereign independent India are derived as such from the people of the States as similar power and authority are in Provinces derived from the people of the provinces. It would be extremely anomalous if the constituent power in Indian States is vested in respect of Union subjects in the people of the States, and in respect to Unit subjects, in the rulers of the States. In the process of building up a new federal structure for India through this Constituent Assembly, it will be found necessary that written constitutions of such States as already have them deserve to be overhauled as in the case of Provinces, and that written constitutions should be newly framed for States which do not have them now. It is possible to defer this work and leave it over for subsequent accomplishment, provision being made in the Union Constitution prescribing the steps to be taken and the procedure to be followed in this connection.

If the representatives of the States in the Constituent Assembly so desire, the Union Constitution should guarantee the territorial integrity of the States as they exist today, subject to any modifications of boundaries which might be effected later on according to prescribed procedure and with the consent of the people of the States and other areas affected. The constitution of a State settled by the people of the State in association with the ruler, might make provision for hereditary succession to the headship of the State in the dynasty which is in possession now of the State, and the Union Constitution might contain a provision that, if the State's Constitution does say so, it will not be interfered with, though a stipulation would be necessary that, in the overhaul of an existing written constitution or in the framing of a new one in any particular State, the hereditary head of it should be, or in the quickest possible time in the future should become, a constitutional monarch presiding over an executive responsible to a legislature, the members of which are democratically elected.

Now, Sir, I wish to refer to only one point in order to stress the need for the provision in clause 4 of the Resolution. The existing written constitutions of individual States almost invariably contain a section that all rights, authority and jurisdiction that appertain or are incidental to the government of the territories included in the States are vested in and exercisable by the ruler, subject to the provisions of the constitution which is granted by the fiat of the Ruler himself. With a view to emphasising the unlimited nature of the sovereign powers claimed by the rulers, such constitutions contain also another provision which enacts that, notwithstanding anything contained in the Constitution Act or in any other Act, all powers, legislative, executive and judicial, are, and have always been inherent and possessed and retained by the Ruler and that nothing contained in any such Act shall affect or be deemed to affect the right and prerogative of the ruler to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority. Such provisions in States constitutions are remnants of an all-pervasive autocracy and deserve to be swept away and replaced by a provision which declares that all powers of government, legislative, executive and judicial, should be deemed to be derived from the people and exercised by such organs of State including the hereditary ruler as may be designated in the written constitution and to the extent authorised by that constitution.

I am afraid, Sir, my time is over. I do not wish to take up any more time, but I hope I have tried to show how necessary it is that this inclusion of the States in clause 4 should remain in this Resolution. As a matter of fact, unless we get into this Assembly the representatives of the people of the States, they cannot really participate in the work of the Assembly and help in the making of a constitution for their own States as well as in the making of a Union Constitution.

(viii)

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General):<sup>1</sup> Sir, after the eloquent speech of our leader, The Hon'ble Pandit Nehru, on the main Resolution and the eloquent speeches of other speakers on the amendment of the Rt. Hon'ble Dr. Jayakar, I shall try to be as brief as possible.

In support of his amendment, my Rt. Hon. friend Dr. Jayakar has raised various points, not all of which, I am afraid, are consistent with one another. His first point was that at this session, it was only competent for the Constituent Assembly to determine

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1. C.A.D. 19 December, 1946, Vol. I, pp. 140-43.

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the order of business and that it should immediately resolve itself into 'A', 'B' and 'C' sections, as the Statement of the Cabinet Mission did not contemplate the transaction of any other business than merely determining the order of business. Secondly, he raised a doubt as to whether it is at all competent for this Assembly and in any event advisable to pass a resolution before the representatives of the Muslim League decided to come in. Lastly, he raised a point that before the States' representatives come in, it may not be right for this Assembly to pass such a Resolution.

None of these points, I venture to say, has any validity. In regard to the first, the Statement of the Cabinet Mission is not in the nature of a Statute which purports to lay down every detail as to the steps to be taken by the Constituent Assembly in the matter of framing a constitution for India. In the language of the Cabinet Mission themselves, their object was merely to settle a machinery whereby a constitution can be settled by Indians for Indians. It is inconceivable that any constitution can be framed or steps taken in that regard without a directing objective which the Assembly has to set before itself. The formulating of such a directive objective does not of course in any way involve this Assembly deviating or departing from the main principles of the Cabinet Statement. You may search in vain for the proceedings of any Constituent Assembly or Convention which has not formulated such a purpose at the commencement of its proceedings. I do not therefore propose to further elaborate the point as to what exactly is the connotation of the expression 'order of business' in the Cabinet Statement.

Now as to the merits of the Resolution itself. There is nothing in the terms of the Resolution to which either the Muslims or the States can take exception if they decide to come in. In fact, neither of these two parties would have a place in this Assembly unless they subscribe to the objective of an independent India. The Statement of the Cabinet Mission in several paragraphs declares that the Constituent Assembly "is committed to the task of framing a constitution for an independent India." They make an appeal in paragraph 24 of the Statement that "the leaders of the people of India have now the opportunity of complete independence" and they say that "they trust that the proposals will enable the people of India to attain their independence in the shortest time." The Statement of the Cabinet Mission, in so many terms, declares that "the new independent India may choose to be a member of the British Commonwealth or not" and in any event they express the hope that "India will remain in close and friendly association with the British people". There is nothing to prevent republican India from

being a member of the British Commonwealth as is the case with Ireland. In fact, it is common knowledge that the conception of British Commonwealth is undergoing change year by year and day by day owing to the force of international events. The Muslim League has, on several occasions, expressed itself that it is as strongly for independence as the Congress. We have no right in this House to read between the lines and presume that Muslim India does not mean what it says for this purpose. The only issue that was raised by the Muslim League was in regard to Pakistan. On that, the Cabinet Mission's Statement is definitely committed to a single Indian Union. It is only if the Muslim League subscribes to the article of a single Indian Union that the Members of the Muslim League have or could have any place in the Constituent Assembly. There is no guarantee nor any indication that the postponement of the Resolution to some day next month will be a factor in the Muslim League making up their mind in joining the deliberations of this Assembly. The argument, therefore, derived from the Muslim League staying away from the present Constituent Assembly and the possibility of their coming in at a later stage has no validity on the propriety of the Resolution before the House.

Then as to the States. Here again, the States or the States' Representatives have a place in this Assembly only if they subscribe to the creed and article of an independent India and if they are committed to the task of framing a constitution for an independent India. Otherwise, they have no place. They must choose to be constituent parts of an independent India or not. If they come in, it can only be on the footing that they are as much committed to the ideal and purpose of framing a constitution for an independent India as we in what is now British India. While I realise that there may be a certain incongruity in the States coming in only at a later stage in the proceedings of this Assembly—that is not of our making—it cannot stand in the way of this Assembly formulating its objective in the form of a resolution at this stage, a resolution which does not commit this Assembly to anything beyond what is contained in the Statement of the Cabinet Mission. Has this Assembly begun to function or not? Or is it in a state of suspended animation until the State representatives choose to come in? We have elected our Chairman; we are proceeding to frame rules of business and we have begun the work of framing a constitution for an independent India. How can it be said that this Assembly has not begun to function? Is there any logic in the argument that the Assembly must not formulate its objective until some other party comes in or can come in? An independent India cannot, as was forcibly pointed out by Pandit Nehru, be a monarchy. The executive head of the



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Union cannot be a hereditary monarch, Hindu, Muslim or Sikh. He can only be an integral part of a Republican Constitution.

There is no substance either in the objection raised on behalf of the States in certain quarters outside the House to paragraph 4 of the Resolution that:

“all power and authority of the Sovereign Independent India, its constituent parts and organs of Government are derived from the people.”

Is it suggested that in respect of the sovereign independent India, the authority of the provincial parts is derived from the people, and, so far as States are concerned, from the hereditary rulers of the States? The Constitution of a sovereign independent India is the concrete expression of the will of the people of India as a whole conceived of as an organic entity, and even in regard to the units themselves, the authority of the rulers can rest ultimately only on the will of the people concerned. The State machinery, be it monarchy or democracy, ultimately derives its sanction from the will of the people concerned. The Divine Right of Kings is not a legal or political creed in any part of the world at the present day. I do not believe that it will be possible for hereditary monarchs to maintain their authority on such a mediaeval or archaic creed. The Cabinet Mission was quite alive to this and in their Statement, reference is made throughout to Indians, meaning thereby Indians both of the Indian States and British India, deciding the future constitution of India, no distinction being drawn between Indians in what is now British tract and what is now native State territory. I need only refer to paragraphs 1, 3, 16 and 24 of the Statement of the Cabinet Mission.

There was one other minor point which formed the subject of criticism, viz. non-reference to Group in the Resolution, by Dr. Ambedkar, who I am glad to say has made a most useful contribution to the debate by giving his unqualified support to a United India. A close examination of the Cabinet Mission's Statement will point to the conclusion that the formation of groups is not an essential part of the constitutional structure. In the most material parts, the main recommendations are that there should be a Union of India dealing with certain subjects, that all subjects other than the Union subjects and residuary powers should vest in the provinces and in the States, the States being assimilated to the position of Provinces under the Cabinet Mission Scheme. There is nothing in the terms of the Resolution to prevent Provinces from forming themselves into Groups as contemplated by the Cabinet Mission. There was further com-



ment as to the reference to 'justice, social, economic and political' being too thin. The expression 'justice, social, economic and political', while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasise the fundamental aim of every democratic State in the present day. The Constitution framed will, I have no doubt, contain the necessary elements of growth and adjustment needed for a progressive society. After all, we have to remember that what we are dealing with is a Resolution setting out the main object of this Assembly and not a Preamble to a Statute.

Without embarking upon a meticulous examination of the different parts of the Resolution, what is important is that at this session we must be in a position to proclaim to our people and to the civilised world what we are after. It has to be remembered that the main object of this Assembly is not the fashioning of a constitution of a Local Board, a District Board or making changes in the present constitution of this or that part of the country but to give concrete expression to the surging aspirations of a people yearning for freedom by framing a constitution for a free and independent India for the good of the people, one and all, of this great historic land, irrespective of caste, community or creed, with a hoary civilisation going back to several centuries. More than any argument, as the resolution before the House has received the blessings and support of Mahatma Gandhi, the architect of India's political destiny, from the distant village in Eastern Bengal, I trust that it will be carried with acclamation by the whole House without dissent and my respected friend, the Rt. Hon. Dr. Jayakar, will see his way to withdraw his amendment unless he has very strong conscientious objection to the course suggested. (*Applause*)

(ix)

Mr. Dambar Singh Gurung (Bengal: General):<sup>1</sup> Mr. Chairman, Sir, I stand (sic) here today as the only representative of 30 lakhs of Gurkhas permanently domiciled in India. It is 30 lakhs, near about the population of the Sikhs, still I am the solitary representative here in this House. I need not give any introduction as to who these Gurkhas are. They have made themselves sufficiently known to the world by their excellent fighting qualities. It has been proved to the hilt during the last World War No. I and No. II that they are the greatest fighting race in the world.

It is on behalf of these valiant Gurkhas that I, as the President of the All-India Gurkha League, whole-heartedly support the Re-

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1. C.A.D. 19 December, 1946, pp. 147-48.

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solution moved by Pandit Jawaharlal Nehru. It is high time that we should take such a strong step. If we adopt the policy of wait and see as has been advocated by Dr. Jayakar and supported by Dr. Ambedkar, we will never reach our goal. The Interim Government which is functioning today would not have come into existence if we had adopted that policy. Fortunately these two Doctors are not Doctors in Medicine, otherwise they would have killed the patient by delaying the operation. (*Laughter*) We have waited too long and we should not wait any longer. It will be simply showing our weakness.

Sir, it has been very often said that the Gurkhas have been the stumbling block on the path to freedom. It may be true if it is viewed from that angle of vision but it must always be remembered that, especially in the Military Department, duty first and duty last, and the discipline is the most essential thing without which no nation can rule. Now in Free India you will ask us to do the same thing as we were asked to do under the British Government, if there be any disruption of the constitutionally established Government, and you will praise them for maintaining that discipline.

Sir, the problem of the Gurkhas is quite different. They are scattered throughout India. It is only in the district of Darjeeling and the Province of Assam that they are concentrated to a certain extent. Their number in these two areas is about 14 lakhs and the rest are scattered throughout India. They are very very backward educationally and economically. Though we were made to do the dirtiest work in India for which we have been even called 'butchers' by Indians, though hundreds and thousands of Gurkha lives were sacrificed to keep the British rule in India and elsewhere, nothing has been done by the British Government so far for the uplift of the Gurkhas. We have been very sadly neglected. Only at the time of war they remember the Gurkhas. It has always been the policy of the British Government to keep us backward and ignorant so that we may be sacrificed any time, anywhere they liked.

The Gurkhas are apprehending whether the same policy will be followed by the Congress too. There is strong ground for this apprehension. Before the election of Members to the Constituent Assembly, the All-India Gurkha League approached the Congress High Command to give adequate representation to the Gurkhas too in the Constituent Assembly but our claim was totally ignored and not a single seat was given for 30 lakhs of Gurkhas, whereas as many as 3 seats were given to the Anglo-Indians whose population is only 1 lakh 42 thousand in India. I do not think that Gurkhas

will, any more, tolerate this kind of injustice. I have very recently been to Nepal, leading a delegation of the All-India Gurkha League to His Highness the Maharaja of Nepal and I hope Nepal will not allow any such exploitation of the Gurkhas. Sir, the demand of the Gurkhas is that they must be recognised as a minority community and that they must have adequate representation in the Advisory Committee that is going to be formed. When the Anglo-Indians with only 1 lakh 42 thousand population have been recognised as a minority community, and Scheduled Castes among the Hindus have been recognised as a separate community, I do not see any reason why Gurkhas with 30 lakhs population should not be recognised as such. The Gurkhas whose total population including Nepal is 15 millions shall have to play a very very important part in Free India. I request the leaders to consider this very seriously.

Lastly, I would like to say a word, Sir. If Mr. Jinnah thinks himself to be an Indian, I would request him to come to India and settle the differences here, as this is our domestic quarrel. Why should he seek the help of those who kept us in slavery for centuries? I would think that a kick from a brother is more palatable than a hypocritic pat from an outsider. If the major party does not do any justice to the cause of the minorities, we will combine together and revolt and make India a hotbed and, I am afraid, the ancient history of India may be repeated. But I must make one point clear, that no minority will support the fantastic claim for Pakistan of Mr. Jinnah. We stand for a United India.

In spite of all this, if Mr. Jinnah goes on throwing the challenge of civil war, I ask the country-men to accept that challenge and let us fight it out. As for the Gurkhas, we will fight along with those who want one India and oppose those who want to divide it

(x)

Dr. S. Radhakrishnan:<sup>1</sup> Mr. Chairman, Sir, I have great pleasure in commending this Resolution to the acceptance of the House. From the list of amendments tabled, I see that there are three different questions raised: whether a declaration of this character is essential; whether this is the proper time for considering such a declaration; and thirdly, whether the objectives included in this Resolution are matters of general agreement or they require modification or amendment.

I believe that such a Declaration is essential. There are people who are suspicious, who are wavering, who are hostile, who look upon the work of this Constituent Assembly with considerable misgivings. There are people who affirm that, within the Cabinet

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1. C.A.D. 20 January, 1947, Vol. II, pp. 269-74.

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Plan, it will not be possible for us to effect either real unity in the country or true freedom or economic security. They tell us that they have seen before squirrels move round in a cage, and that within the limits of this Cabinet Statement, it will not be possible for us to effect the revolutionary changes which the country is aiming at. They argue from history that revolutionary changes are generally effected by violent action overthrowing established governments. The British people were able to end monarchical despotism that way; the United States of America attained her primary freedom through direct action; the French, the Bolshevik, the Fascist and the Nazi revolutions were also effected by similar methods. ~~We told that we can not effect revolutionary changes through peaceful methods, through negotiation and discussion in constituent assemblies.~~ We reply that we have similar ends; we wish to bring about a fundamental alteration in the structure of Indian society. We wish to end our political and economic dependence, but those who are strong of spirit, those who are not short of sight, take their chances—they make their chances. Here is a chance that is open to us and we wish to use this to find out whether it will be possible for us to gain the revolutionary ends by methods which are unusual so far as past history is concerned. We want to try whether it will not be possible for us to effect a smooth and rapid transition from a state of serfdom to one of freedom. That is the undertaking which this particular Assembly has on hand. We wish to tell all those who are abstaining from this Assembly that it is not our desire to establish any sectional Government. We are not here asking anything for a particular community or a privileged class. We are here working for the establishment of Swaraj for all the Indian people. It will be our endeavour to abolish every vestige of despotism, every heirloom of inorganic tradition. We are here to bring about real satisfaction of the fundamental needs of the common man of this country, irrespective of race, religion or community. If the trumpet gives an uncertain sound, we cannot rally the people to our support. It is therefore essential that our bugle-call, our trumpet-sound, must be clear, must give the people a sense of exhilaration, must give the suspicious and the abstaining a sense of reassurance that we are here pledged to achieve full independence of India, where no individual will suffer from undeserved want, where no group will be thwarted in the development of its cultural life. Therefore I believe that a declaration of objectives of this character is essential and it is not necessary for us to wait till this Assembly is fuller than it happens to be at the present moment.

Now let us turn to the objectives themselves. We resolve that India shall be an Independent, Sovereign Republic. On the question of independence there is no difference of opinion. Premier Attlee, in his first statement, made on 15th March, said:

"I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so; but if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. If, on the other hand, she elects for independence, in our view she has a right to do so."

The Muslim League and the Princes have all agreed to it. In the Memorandum on *States, Treaties and Paramountcy*, presented by the Cabinet Mission to the Chancellor of the Chamber of Princes on the 12th May, 1946, it is said:

"The Chamber has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature. His Majesty's Government have now declared that, if the Succession Government or Governments in British India declare independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth."

All those concerned with the future of India, the Congress, the Muslim League, and other organisations and Princes also, they all desire independence for India within or without the British Commonwealth.

Mr. Churchill, in the House of Commons, referring to His Majesty's Government's offer of independence, said on the 1st of July, 1946:

"However, it is another matter when we try to short-circuit the process and say, 'Take independence now'. That is what the Government are going to get and they are going to get it very soon. They should not blind themselves to the idea. There is going to be no hesitation on the part of those with whom the Government is dealing in taking full and immediate independence. That is what is going to happen."

This Resolution on the objectives does not wish to disappoint Mr. Churchill. (*Hear, hear.*) It tells him that the expected is happening. You gave us the choice to get out of the British Commonwealth. We are electing to go out of the British Commonwealth. May I say why? So far as India is concerned, it is not a mere Dominion like Australia, like New Zealand or Canada or

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South Africa. These latter are bound to Great Britain by ties of race, religion and culture. India has a vast population, immense natural resources, a great cultural heritage and has had an independent career for a very long time, and it is inconceivable that India can be a Dominion like the other Dominions.

Secondly, let us consider the implications of what happened at the United Nations Organisation, when the Indian Delegation, headed by our distinguished colleague, Mrs. Vijayalakshmi Pandit, so ably defended the rights of Indians in South Africa—look at the attitude that was adopted by Great Britain. Great Britain along with Canada and Australia supported South Africa, New Zealand abstaining from voting. It shows that there is a community of ideals between Great Britain and the other Dominions in which India has no share. There is no sense of belonging in the British Commonwealth. We do not feel that we are all members, enjoying similar rights as parts of the British Commonwealth. Some of you may also have heard of the recent move launched by Mr. Churchill and Lord Templewood for a European Union under the fostering care and leadership of Great Britain. That also shows in what way the wind is blowing.

Yet, even though India may elect to quit the British Commonwealth, there are a hundred different ways of voluntary co-operation, ways of mutual collaboration, in trade, in defence, in matters of culture; but whether all these forms of mutual co-operation are going to develop in a spirit of friendship, trust and harmony, or whether they will be allowed to die out in mutual distrust and recrimination, depends entirely on the attitude which Great Britain will adopt in this crisis. This Resolution about the Indian Republic seems to have irritated Mr. Churchill and his followers. Our Chairman today referred to one statement by Mr. Churchill and I will refer to some others.

When the debate on Burma took place, Mr. Churchill stated that the annexation of Burma happened during his father's Secretaryship, and that now Burma is given the liberty to get out of the British Commonwealth. He seems to look upon Burma and India as parts of his ancestral estate, and now when they are passing out, he seems to be terribly disheartened.

On the debate on India, he asked His Majesty's Government to remember its obligations "to the Muslims, numbering 90 millions, who comprised the majority of the fighting elements of India"—truth is not rated high in Indian debates and international intercourse—"and of untouchables of anything from 40 to 60 millions." He refers to the representatives of the great Congress Party as the

mouthpiece "of actively organised and engineered minorities who, having seized upon power by force, or fraud or chicanery, go forward and use that power in the name of vast masses with whom they have long since lost all effective connection." A party of men who have braved the perils of life, who have suffered for their patriotism, whose love of country and capacity for sacrifice are second to none in the whole world, who are led by one who is today leading a lonely trek in a far off corner of India, bearing on his aging shoulders the burden of a nation's shame and sorrow, to talk of that party in the way in which Mr. Churchill has done is—I do not know how to describe it. (*Cries of 'Shame'.*) Mr. Churchill's outbursts are bereft of dignity or discretion. Provocative and irrelevant remarks, sneers of derision in regard to our communal divisions, have punctuated his speech on that occasion and on other occasions. I shall only say here that such speeches and such statements cannot prevent the end but can only postpone it and thus prolong the agony. The British connection will end, it must end. Whether it ends in friendship and goodwill or in convulsions and agony, depends upon the way in which the British people treat this great problem.

'Republic' is a word which has disturbed some of the representatives of the States in this country. We have said from this platform that a Republican India does not mean the abolition of Princely rule. Princes may continue; Princes will be there so long as they make themselves constitutional; so long as they make themselves responsible to the people of the States. If the great paramount power, which is sovereign in this country by conquest, is now transferring responsibility to the representatives of the people, it goes without saying that those who depend on that paramount power should do what the British have done. They must also transfer responsibility to the representatives of the people.

We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of the Deccan asked the question, "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings."

*Kecid deśo gaṇādhīnā kecīd rājādhīnā.*

Panini, Megasthenes and Kautilya refer to the Republics of Ancient India. The Great Buddha belonged to the Republic of Kapilavastu.

Much has been said about the sovereignty of the people. We have held that the ultimate sovereignty rests with the moral law,



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with the conscience of humanity. People as well as kings are subordinate to that. Dharma, righteousness, is the king of kings.

*Dharmam kshatrasya kshatram.*

It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted. The Princes—I count many of them amongst my personal friends—have agreed with the Cabinet Statement and wished to take their share in the future development of this country, and I do hope that they will realise that it is their duty to take notice of the surging hopes of their peoples and make themselves responsible. If they do so, they will play a notable part in the shaping of our country. We have no ill-will towards the Princes. The assertions of republicanism, the assertions of the sovereignty of the people, do not in any manner indicate any antagonism to the Princely rule itself. They do not refer to the present facts or past history of the Indian States but they indicate the future aspirations of the peoples of the States.

The next thing that we find in this Resolution is about the Union of India. The Cabinet Statement has ruled out the partition of India. Geography is against it. Military strategy is against it. The aspirations of Hindus, Muslims and Sikhs from the very beginning have been against it. The present tendency is for larger and larger aggregations. Look at what has happened in America, in Canada and Switzerland. Egypt wishes to be connected with Sudan, South Ireland wishes to be connected with North Ireland. Palestine is protesting against any division. Again nationalism, not religion, is the basis of modern life. Allenby's liberating campaigns in Egypt, Lawrence's adventures in Arabia, Kemal Pasha's defiant creation of a secular Turkey, point out that the days of religious States are over. These are the days of nationalism. The Hindus and Muslims have lived together in this country for over a thousand years. They belong to the same land, speak the same language. They have the same racial ancestry. They have a common destiny to work for. They interpenetrate one another. It is not a kind of Ulster, which we can separate; but our Ulster is a ubiquitous one. Even if we have two States, there will be large minorities and these minorities, whether really oppressed or not, will look across their frontiers and ask for protection. This will be a source of continual strife which will go on, as long as we do not have a United India. We realise that while a strong Centre is essential to mould all the peoples into one united whole, on account of the grievances, real or imaginary, we have to be satisfied with a Centre which is limited to the three subjects, which the Cabinet Plan has put before us. Therefore, we are proceeding on the



principle of Provincial Autonomy, with the residuary powers to the Provinces themselves. Events that have happened in Bihar and Bengal, tell us that there is an urgent need for a strong Centre. Yet as there are these difficulties, we propose to develop a multi-national State which will give adequate scope for the play of variations among the different cultures themselves.

Grouping has given us a lot of trouble. But grouping is subject to two essential factors—which are the integral parts of the Cabinet Plan,—a Union Centre and residuary powers in the Provinces; and in these Groups also we will have large minorities. Those who are insistent on the rights of minorities will have to concede these rights to others who happen to be included in the Groups. In a statement made by Sir Stafford Cripps on July 18, 1946, he said:

“A fear was expressed that somehow or other the new Provincial Constitutions might be so manoeuvred as to make it impossible for the Provinces afterwards to opt out. I do not myself see how such a thing would be possible, but if anything of that kind were to be attempted, it would be a clear breach of the basic understanding of this Scheme.”

That is what Sir Stafford Cripps said. If any attempt is made to so manipulate electorates as to make it difficult for the Provinces to opt out, then that would be, in the words of Sir Stafford Cripps, “a clear breach of the basic understanding of this Scheme.” After all we have to live together and it is impossible to impose any constitution against the wishes of the people who are to be governed by that constitution.

There is also a reference to fundamental rights in this Resolution. It is a socio-economic revolution that we are attempting to bring about. It is therefore necessary that we must re-make the material conditions; but apart from re-making the material conditions, we have to safeguard the liberty of the human spirit. It is no good creating conditions of freedom without producing a sense of freedom. The mind of man must have full liberty to flower and mature and to grow to its fullest stature. The progress of man is due to the play of his mind, now creating, now destroying, always transmuting. We must safeguard the liberty of the human spirit against the encroachments of the State. While State regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.

We are actors today in a great historical drama. We are involved in it and therefore we are unable to perceive the large contours of it. This declaration, which we make today, is of the

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nature of a pledge to our own people and a pact with the civilized world.

The question was put by Mr. Churchill to Mr. Alexander whether this Assembly is functioning validly. Mr. Alexander said:

"I repeat the scheme for elections for the Constituent Assembly was carried out. If the Muslim League abstained from going there, how can you prevent a duly elected Assembly from going on to do its business?"

That is what Mr. Alexander said. There was some difficulty about the interpretation of the grouping. Much against its will, the Congress has accepted His Majesty's Government's interpretation. The only two clauses that remain are adequate safeguards for minorities, and a treaty on the problems which arise out of transfer of power. The Constituent Assembly is legally functioning. Every part of the State Paper has been completely accepted and if we are able to frame adequate safeguards for minorities, safeguards which will satisfy not so much the British or our own people, but the civilized conscience of the world, then while yet the British have the power to put it into action, they must give this Constitution the force of law. It is essential that they should do so. If after all these conditions are satisfied, if some excuse is invented for postponing the independence of India, it would be the most callous betrayal of history. If, on the other hand, the British argue that the Constituent Assembly has started functioning on the basis of the Cabinet plan and they have accepted every clause of the State Paper of May 16, and have provided adequate safeguards of all minorities and therefore they should implement it, then it will be an achievement of history which will secure the co-operation in goodwill for two great peoples.

In that very speech which Mr. Attlee made as the Prime Minister on March 15, he said:

"In the mass of Asia, an Asia ravaged by war, we have here the one country that has been seeking to apply the principles of democracy. I have always felt myself that political India might be the light of Asia....."

Nay, the light of the world giving to its distracted mind an integral vision and to its bewildered will an upward direction.

Here are the two alternatives. Accept the Constituent Assembly. Take its findings. Find out whether there are adequate safeguards for minorities or not. If they are there, give them the force of law and you may get co-operation. If, after all these conditions are fulfilled, you still try to make out that something is

lacking, the British will be understood as violating the spirit of the whole State Paper, and the dark possibilities which will lie ahead of us in the present world conditions, I do not wish to contemplate.

(xi)

*Dr. M. R. Jayakar (Bombay: General) withdraws his amendment<sup>1</sup>*

Sir, I am very grateful to you for giving me a few minutes to make a short statement in connection with the amendment which I moved at a very early stage of this debate. The Assembly will recall that that amendment was dictated by a few considerations, mainly, the desire to make it easier for the Muslim League and the Indian States to take part in our deliberations. In connection with the Muslim League I can say that the Assembly practically accepted the proposal which was contained in my amendment. It postponed its deliberations to the 20th of January. It has gone further and accepted the Statement of His Majesty's Government of the 6th December. Though it did all this, the Muslim League has still not come in. Whether they propose to come in, nobody knows. They have held their cards up to the 29th January knowing full well that on the 20th of the month, nine days before they meet, we shall meet here. In the course of my speech I suggested as a compromise one course, namely, that if this Assembly was not willing to wait until the stage was reached according to the terms of sub-clause 6 of paragraph 19 of the Cabinet Mission's Statement after the Sections had met and framed their Constitutions,—I said that if this Assembly was not prepared to wait till then because that stage would be reached at a very late date,—I suggested that we should at least wait until the date of our next session, namely, 20th January, which I thought would give the Muslim League enough time to make up its mind. I, having made that suggestion, and the House having accepted it, realize that I am in honour bound not to press my amendment any further. (*Cheers*) I do not want however to appear as if I was backing out of the considerations which prompted my amendment, but as the House accepted the proposal I definitely made, the contract is complete. I do not therefore propose to press my amendment. But in doing so, I may be permitted to urge a few considerations before the House. If those considerations appeal to the House, it might, of its own motion, take such course as it thinks best. Those considerations are just a few and I ask for your patience for a few minutes.

Mr. President: Is it any new proposal that the Right Hon'ble Member is making now?

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1. C.A.D. January 21, 1947; vol. II, pp. 308-309.

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The Right Hon'ble Dr. M. R. Jayakar: Sir, I am not making a new proposal. I wish only to suggest that in considering the Resolution now before the House a few considerations. . . . .

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): Sir, may I just submit that Dr. Jayakar has, I understand, withdrawn his amendment? Having withdrawn his amendment, it is not, I think, proper and also not regular that he should make a fresh speech now. He has had his opportunity to express his views fully on the day he spoke during the last session. Now, having withdrawn his amendment. . . . . (Voices: *Go to the microphone, please*). . . . . I was submitting that Dr. Jayakar has now withdrawn his amendment. A person who has already delivered a speech may be allowed a special opportunity for withdrawing his amendment if he chooses to do so. Having withdrawn his amendment he should not however complicate the situation further by proposing, in some form or other, a new and a fresh amendment at this stage. Whether he puts his idea forward in the precise form of an amendment or otherwise, makes no difference. In any case, if he chooses to make a new suggestion now and thus put the Assembly in an awkward and embarrassing position, the difficulty is not met by his refraining from calling it an amendment. It remains an amendment none-the-less. The stage for that is past. So, I submit it is not open to him to make any fresh proposals now, whether under the guise of remarks or observations. He has exhausted the opportunity, the special opportunity that was given to him. Now he may well be requested to resume his seat. (A Voice: *Is there any new proposal?*)

Mr. President: No new proposals (sic) at this stage. I only allowed Dr. Jayakar to declare his position in withdrawing his amendment.<sup>1</sup>

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The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General):\* "Mr. President, six weeks have passed since I moved this Resolution. I had thought then that the Resolution would be discussed and passed within two or three days, but later the House decided to postpone it in order to give time to others to think over it. The decision to postpone an important Resolution like this was probably not to the liking of others like me, but I did not doubt that the decision was sound and proper. The anxiety and impatience in our hearts was not for the passage of the Resolution, which is simply a symbol, but to attain the high aims which were enshrined

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1. The amendment was withdrawn.

\* English translation of Hindustani speech begins.

in it. It is also our intense desire to march on with all others and reach our goal with millions of Indians. Therefore, it was advisable to postpone the Resolution and to afford ample opportunity not only to this House but also to the country in general to think over it. The sense of all amendments and specially the amendment moved by Dr. Jayakar was generally for postponement. I am grateful to Dr. Jayakar for the withdrawal of his amendment and I thank the others also who have withdrawn their amendments. Many members have spoken on the Resolution. Their number may be thirty or forty or more. Almost all of them have supported it without any criticism. Some of them, of course, have drawn our attention to some particular matters. I am of opinion that if a plebiscite of the crores of people of India is taken, all of them will be found to stand for the Resolution; though there might be some who would lay more or less emphasis on some particular aspect of the Resolution. The Resolution was meant to clothe in words the desire of crores of Indians and it was very carefully worded so as to avoid any strongly controversial issue.

There is no need to say a great deal about this but, with your permission, I would like to draw your attention to some points. One of the reasons for the postponement of the Resolution was that we wished that our brothers, who had not come here, should be in a position to decide to come in. They have had a full month to consider the matter but I regret that they have not yet decided to come. However, as I have already said at the outset, we will keep the door open for them and they will be welcomed up to the last moment, and we will give them and others, who have a right to come in, every opportunity for coming in. But it is clear that, while the door remains open, our work cannot be held up. It has, therefore, become indispensable for us to proceed further and carry the Resolution to its logical conclusion. I have hopes that even at this stage those, who are absent, would decide to come in.

Some of us, even though they are in agreement with this Resolution, were in favour of postponing some other business too so that the absentees might not find any obstacle in their way to come in. I am in sympathy with this suggestion but in spite of this I am at a loss to understand how this suggestion could be put forward. That is a question of waiting; not that of postponing the Resolution. We have waited for six long weeks. This is no matter of weeks; ages have slipped by while we have been waiting. How long are we to wait now? Many of us who waited have since passed away and many are nearing the end of their lives. We have waited enough and now we cannot wait any longer. We are to

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further the work of the Assembly, speed up the pace and finish our work soon. You should bear in mind that this assembly is not only to pass resolutions: I may point out that the Constitution, which we frame, is not an end by itself; but it would be only the basis for further work.

The first task of this assembly is to free India through a new constitution, to feed the starving people and clothe the naked masses, and to give every Indian fullest opportunity to develop himself according to his capacity. This is certainly a great task. Look at India today. We are sitting here and there is despair in many places, and unrest in many cities. The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon all our paper constitution will become useless and purposeless. Keeping this aspect of view, who could suggest to us to postpone and wait?

A point has been raised from one side that some ideas contained in the Resolution do not commend themselves to the Rulers of the States, because they conflict with the powers of the Princes. A suggestion has also been made to postpone the decision about the States in the absence of their representatives. It is a fact they are not present here but if we wait for them it is not possible for us to finish the work even at the end of the Constituent Assembly according to the plan. This is impossible. Our Scheme was not that they should come in at the end. We invited them to come in at the beginning. If they come, they are welcome. Nobody is going to place any obstacles. If there is any hesitation, it is on their part only. A month ago you formed a Committee to get into touch with their representatives. We were always anxious to discuss with them although we did not get any opportunity for it. That is no fault of ours. We did not ask for time. We want to finish our work as early as possible. I am informed they complain of the following words contained in the Resolution.

‘Sovereignty belongs to the people and rests with the people.’

That is to say, the final decision should rest with the people of the States. They object to this. It is certainly a surprising objection. It may not be very surprising if those people who have lived in an atmosphere of mediaevalism do not give up their cherished illusions, but in the modern age how can a man believe for a mo-

ment in the divine and despotic rights of a human being? I fail to understand how any Indian, whether he belongs to a State or to any other part of the country, could dare utter such things. It is scandalous now to put forward an idea which originated in the world hundreds of years ago and was buried deep in the earth long before our present age. However, I would respectfully tell them to desist from saying such things. They are putting a wrong thing before the world and by doing so they are lowering their own status and weakening their own position. At least this Assembly is not prepared to damage its very foundation and, if it does so, it will shake the very basis of our whole constitution.

We claim in this Resolution to frame a free and democratic Indian Republic. A question may be asked: What relation will that Republic bear to other countries of the world? What would be its relations with England, the British Commonwealth and other countries? This Resolution means that we are completely free and are not included in any group except the Union of Nations which is now being formed in the world. The truth is that the world has totally changed. The meanings of words too are changing. Today any man who can think a little, will come to the conclusion that the only way to remove the doubts and dangers from the world, is to unite all the nations and ask them to work together and help each other. The organisation of the United Nations is not free from big gaps and fissures. Thousands of difficulties lie ahead and a great deal of suspicion exists between countries. I have already said that we are not thinking in terms of isolating ourselves from the world. We will work in complete co-operation with other countries. It is not an easy thing to work in co-operation with England or the British Commonwealth, and yet we are prepared to do so. We will forget our old quarrels, strive to achieve our complete independence and stretch our hands of friendship to other countries, but that friendship shall in no case mar or weaken our freedom.

This is not a resolution of war; it is simply to put our legitimate rights before the world; and in doing so if we are challenged, we will not hesitate in accepting that challenge. But after all, this is a resolution of goodwill and compromise, among the people of India, whatever their community or religion and with the different countries of the world including England and the British Commonwealth of Nations. The Resolution claims to be on friendly terms with all and it has been put before you with that motive and intention. I hope you will accept it.

A friend has suggested that it would be advisable to move the Resolution just on the eve of the Independence Day (sic) which is due



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to come after four days only. But I will ask him if it is proper to delay a proper thing even for a moment. Not a moment's postponement is advisable and we should finish our work as soon as possible.

This Resolution which has been put before you is in a new form and in a new shape, but I would like to tell you that it has a long trail (*sic*) of resolutions, pledges and declarations including the world-famed resolutions of "Independence" and "Quit India" behind it. It is high time to fulfil our pledges which we made from time to time. How are these pledges to be fulfilled? The right answer lies with you and I hope you will not only accept the Resolution but also fulfil it as you fulfil a solemn pledge.

One thing more I would like to tell you. We have been confronted and will again be confronted with various questions. Persons of various groups, communities, and interests would look at it from different points of view, and diverse questions and problems would be raised by them, but we should all bear in mind that we should not, on the eve of Independence, allow ourselves to be carried away by petty matters. If India goes down, all will go down; if India thrives, all will thrive and if India lives, all will live including the parties, communities and groups.

With your permission I would like to say something in English also.\*

Mr. President, it was my proud privilege, Sir, six weeks ago, to move this Resolution before this Hon'ble House. I felt the weight and solemnity of that occasion. It was not a mere form of words that I placed before the House, carefully chosen as those words were. But those words and the Resolution represented something far more; they represented the depth of our being; they represented the agony and hopes of the nation coming at last to fruition. As I stood here on that occasion I felt the past crowding round me, and I felt also the future taking shape. We stood on the razor's edge of the present, and as I was speaking, I was addressing not only this Hon'ble House, but the millions of India, who were vastly interested in our work. And because I felt that we were coming to the end of an age, I had a sense of our forbears watching this undertaking of ours and possibly blessing it, if we moved aright, and the future, of which we become trustees, become almost a living thing, taking shape and moving before our eyes. It was a great responsibility to be trustees of the future, and it was some responsibility also to be inheritors of the great past of ours. And between that great past and the great future which we envisage,

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\* English translation of Hindustani speech ends.

we stood on the edge of the present and the weight of that occasion, I have no doubt, impressed itself upon this Hon'ble House.

So, I placed this Resolution before the House, and I had hoped that it could be passed in a day or two and we could start our other work immediately. But after a long debate this House decided to postpone further consideration of this Resolution. May I confess that I was a little disappointed because I was impatient that we should go forward? I felt that we were not true to the pledges that we had taken by lingering on the road. It was a bad beginning that we should postpone even such an important Resolution about objectives. Would that imply that our future work would go along slowly and be postponed from time to time? Nevertheless, I have no doubt that the decision this House took in its wisdom, in postponing this Resolution, was a right decision, because we have always balanced two factors, one, the urgent necessity in reaching our goal, and the other, that we should reach it in proper time and with as great a unanimity as possible. It was right, therefore, if I may say with all respect, that this House decided to adjourn consideration of this Motion and thus not only demonstrated before the world our earnest desire to have all those people here who have not so far come in here, but also to assure the country and every one else, how anxious we were to have the co-operation of all. Since then six weeks have passed, and during these weeks there has been plenty of opportunity for those who wanted to come. Unfortunately, they have not yet decided to come and they still hover in this state of indecision. I regret that, and all I can say is this, that we shall welcome them at any future time when they may wish to come. But it should be made clear without any possibility of misunderstanding that no work will be held up in future, whether any one comes or not. (*Cheers*) There has been waiting enough. Not only waiting six weeks, but many in this country have waited for years and years, and the country has waited for some generations now. How long are we to wait? And if we, some of us, who are more prosperous, can afford to wait, what about the waiting of the hungry and the starving? This Resolution will not feed the hungry or the starving, but it brings a promise of many things—it brings the promise of freedom, it brings the promise of food and opportunity for all. Therefore, the sooner we set about it the better. So we waited for six weeks, and during these six weeks the country thought about it, pondered over it, and other countries also, and other people who are interested have thought about it. Now we have come back here to take up the further consideration of this Resolution. We have had a long debate and we stand on the verge of passing it. I am grateful to Dr. Jayakar and Mr. Sahaya

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for having withdrawn their amendments. Dr. Jayakar's purpose was served by the postponing of this Resolution, and it appears now that there is no one in this House who does not accept fully this Resolution as it is. It may be, some would like it to be slightly differently worded or the emphasis placed more on this part or on that part. But taking it as a whole, it is a resolution which has already received the full assent of the country. (*Cheers*)

There have been some criticisms of it, notably from some of the Princes. Their first criticism has been that such a Resolution should not be passed in the absence of the representatives of the States. In part I agree with that criticism, that is to say, I should have liked all the States being properly represented here, the whole of India—every part of India—being properly represented here, when we pass this Resolution. But if they are not here it is not our fault. It is largely the fault of the Scheme under which we are functioning and we have this choice before us. Are we to postpone our functioning because some people cannot be here? That would be a dreadful thing if we stopped not only this Resolution, but possibly so much else, because representatives of the States are not here. So far as we are concerned, they can come in at the earliest possible moment, we will welcome them if they send proper representatives of the States. So far as we are concerned, even during the last six weeks or a month, we have made some effort to get into touch with the Committee representing the States Rulers to find a way for their proper representation here. It is not our fault that there has been any delay. We are anxious to get every one in, whether it is the representatives of the Muslim League or the States or any one else. We shall continue to persevere in this endeavour so that this House may be as fully representative of the country as it is possible to be. So, we cannot postpone this Resolution or anything else because some people are not here.

Another point has been raised: The idea of the sovereignty of the people, which is enshrined in this Resolution, does not commend itself to certain rulers of Indian States. That is a surprising objection and, if I may say so, if that objection is raised in all seriousness by anybody, be he a Ruler or a Minister, it is enough to condemn the Indian States system of every Ruler or Minister that exists in India. It is a scandalous thing for any man to say, however highly placed he may be, that he is here by special divine dispensation to rule over human beings today. That is a thing which is an intolerable presumption on any man's part, and it is a thing which this House will never allow and will repudiate if it is put before it. We have heard a lot about this Divine Right of Kings;

we had read a lot about it in past histories and we had thought that we had heard the last of it and that it had been put an end to and buried deep down into the earth long ages ago. If any individual in India or elsewhere raises it today, he would be doing so without any relation to the present in India. So, I would suggest to such persons in all seriousness that, if they want to be respected or considered with any measure of friendliness, no such idea should be even hinted at, much less said. On this there is going to be no compromise. (*Hear, hear.*)

But, as I made plain on the previous occasion when I spoke, this Resolution makes it ~~clear that we are not interfering in the~~ internal affairs of the States. I even said that we are not interfering with the system of monarchy in the States, if the people of the States so want it. I gave the example of the Irish Republic in the British Commonwealth and it is conceivable to me that, within the Indian Republic, there might be monarchies if the people so desire. That is entirely for them to determine. This Resolution and, presumably, the Constitution that we make, will not interfere with that matter. Inevitably it will be necessary to bring about uniformity in the freedom of the various parts of India, because it is inconceivable to me that certain parts of India should have democratic freedom and certain others should be denied it. That cannot be. That will give rise to trouble, just as in the wide world today there is trouble because some countries are free and some are not. Much more trouble will there be if there is freedom in parts of India and lack of freedom in other parts of India.

But we are not laying down in this Resolution any strict system in regard to the governance of the Indian States. All that we say is this, that they, or such of them as are big enough to form unions or group themselves into small unions, will be autonomous units with a very large measure of freedom to do as they choose, subject no doubt to certain central functions in which they will co-operate with the Centre, in which they will be represented in the Centre and in which the Centre will have control. So that, in a sense, this Resolution does not interfere with the inner working of those Units. They will be autonomous and, as I have said, if those Units choose to have some kind of constitutional monarchy at their head, they would be welcome to do so. For my part, I am for a Republic in India as anywhere else. But, whatever my views may be on that subject, it is not my desire to impose my will on others; whatever the views of this House may be on this subject, I imagine that it is not the desire of this House to impose its will in these matters.

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So, the objection of the Ruler of an Indian State to this Resolution becomes an objection, in theory, to the theoretical implications and the practical implications of the doctrine of sovereignty of the people. To nothing else does any one object. That is an objection which cannot stand for an instant. We claim in this Resolution to frame a constitution for a Sovereign, Independent, Indian Republic—necessarily Republic. What else can we have in India? Whatever the States may have or may not have, it is impossible and inconceivable and undesirable to think in any other terms but in terms of the Republic in India.

Now, what relation will that Republic bear to the other countries of the world, to England and to the British Commonwealth and the rest? For a long time past we have taken a pledge on Independence Day that India must sever her connection with Great Britain, because that connection had become an emblem of British domination. At no time have we thought in terms of isolating ourselves in this part of the world from other countries or of being hostile to countries which have dominated over us. On the eve of this great occasion, when we stand on the threshold of freedom, we do not wish to carry a trail of hostility with us against any other country. We want to be friendly to all. We want to be friendly with the British people and the British Commonwealth of Nations.

But what I would like this House to consider is this: When these words and these labels are fast changing their meaning and in the world today there is no isolation, you cannot live apart from the others. You must co-operate or you must fight. There is no middle way. We wish for peace. We do not want to fight any nation if we can help it. The only possible real objective that we, in common with other nations, can have is the objective of co-operating in building up some kind of world structure, call it 'One World', call it what you like. The beginnings of this world structure have been laid down in the United Nations Organisation. It is feeble yet; it has many defects; nevertheless, it is the beginning of the world structure. And India has pledged herself to co-operate in that work.

Now, if we think of that structure and our co-operation with other countries in achieving it, where does the question come of our being tied up with this Group of Nations or that Group? Indeed, the more groups and blocs are formed, the weaker will that great structure become.

Therefore, in order to strengthen that big structure, it is desirable for all countries not to insist, not to lay stress, on separate groups and separate blocs. I know that there are such separate groups

and blocs today and, because they exist today, there is hostility between them, and there is even talk of war among them. I do not know what the future will bring to us, whether peace or war. We stand on the edge of a precipice and there are various forces which pull us on one side in favour of co-operation and peace, and on the other push us towards the precipice of war and disintegration. I am not prophet enough to know what will happen, but I do know that those who desire peace must deprecate separate blocs which necessarily become hostile to other blocs. Therefore India, in so far as it has a foreign policy, has declared that it wants to remain independent and free of all these blocs and that it wants to co-operate on equal terms with all countries. It is a difficult position because, when people are full of fear of each other, any person who tries to be neutral is suspected of sympathy with the other party. We can see that in India and we can see that in the wider sphere of world politics. Recently an American statesman criticised India in words which show how lacking in knowledge and understanding even the statesmen of America are. Because we follow our own policy, this group of nations thinks that we are siding with the other and that group of nations thinks that we are siding with this. That is bound to happen. If we seek to be a free, independent, democratic republic, it is not to dissociate ourselves from other countries, but rather as a free nation to co-operate in the fullest measure with other countries for peace and freedom to co-operate with Britain, with the British Commonwealth of Nations, with the United States of America, with the Soviet Union, and with all other countries, big and small. But real co-operation would only come between us and these other nations when we know that we are free to co-operate and are not imposed upon and forced to co-operate. So long as there is the slightest trace of compulsion, there can be no co-operation.

Therefore, I commend this Resolution to the House and I commend this Resolution, if I may say so, not only to this House but to the world at large so that it can be perfectly clear that it is a gesture of friendship to all, and, that behind it there lies no hostility. We have suffered enough in the past. We have struggled sufficiently, we may have to struggle again, but under the leadership of a very great personality we have sought always to think in terms of friendship and goodwill towards others, even those who opposed us. How far we have succeeded, we do not know, because we are weak human beings. Nevertheless, the impress of that message has found a place in the hearts of millions of people of this country, and even when we err and go astray, we cannot forget it. Some of us may be little men, some may be big, but whether we

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are small men or big, for the moment we represent a great cause and therefore something of the shadow of greatness falls upon us. Today in this Assembly we represent a mighty cause and this Resolution that I have placed before you gives some semblance of that cause. We shall pass this Resolution, and I hope that this Resolution will lead us to a Constitution on the lines suggested by this Resolution. I trust that the Constitution itself will lead us to the real freedom that we have clamoured for and that real freedom in turn will bring food to our starving peoples, clothing for them, housing for them and all manner of opportunities of progress, that it will lead also to the freedom of the other countries of Asia, because in a sense, however unworthy, we have become—let us recognise it—the leaders of the freedom movement of Asia, and whatever we do, we should think of ourselves in these larger terms. When some petty matter divides us and we have difficulties and conflicts amongst ourselves over these small matters, let us remember not only this Resolution but this great responsibility that we shoulder, the responsibility of the freedom of 400 million people of India, the responsibility of the leadership of a large part of Asia, the responsibility of being some kind of guide to vast numbers of people all over the world. It is a tremendous responsibility. If we remember it, perhaps we may not bicker so much over this seat or that post, over some small gain for this group or that. The one thing that should be obvious to all of us is this, that there is no group in India, no party, no religious community, which can prosper if India does not prosper. If India goes down, we go down, all of us, whether we have a few seats more or less, whether we get a slight advantage or we do not. But if it is well with India, if India lives as a vital free country, then it is well with all of us, to whatever community or religion we might belong.

We shall frame the Constitution, and I hope it will be a good constitution, but does anyone in this House imagine that, when a free India emerges, it will be bound down by anything that even this House might lay down for it? A free India will see the bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, but I do know that it will not consent to be bound down by anything. Some people imagine that what we do now may not be touched for 10 years or 20 years; if we do not do it today we will not be able to do it later. That seems to me a complete misapprehension. I am not placing before the House what I want done and what I do not want done, but I should like the House to consider that we are on the eve of revolutionary changes, revolutionary in every sense of the word, because, when the spirit of a nation breaks its bonds, it functions



in peculiar ways and it should function in strange ways. It may be that the Constitution this House may frame may not satisfy that free India. This House cannot bind down the next generation or the people who will duly succeed us in this task. Therefore, let us not trouble ourselves too much about the petty details of what we do, those details will not survive for long, if they are achieved in conflict. What we achieve in unanimity, what we achieve by co-operation, is likely to survive. What we gain here and there by conflict and by overbearing manners and by threats will not survive long. It will only leave a trail of bad blood. And so now I commend this Resolution to the House and may I read the last para of this Resolution? But one word more, Sir, before I read it. India is a great country, great in her resources, great in her manpower, great in her potential, in every way; I have little doubt that a Free India on every plane will play a big part on the world stage, even on the narrowest plane of material power, and I should like India to play that great part on that plane. Nevertheless today there is a conflict in the world between forces on different planes. We hear a lot about the atom bomb and the various kinds of energy that it represents and in essence today there is a conflict in the world between two things: that atom bomb and what it represents, and the spirit of humanity. I hope that while India will no doubt play a great part in all the material spheres, she will always lay stress on that spirit of humanity, and I have no doubt in my mind, that ultimately in this conflict, that is confronting the world, the human spirit will prevail over the atom bomb. May this Resolution bear fruit and may the time come when, in the words of this Resolution, this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

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Mr. President:<sup>1</sup> The time has now arrived when you should give your solemn votes on this Resolution. Remembering the solemnity of the occasion and the greatness of the pledge and the promise which this Resolution contains, I hope every Member will stand up in his place when giving his vote in favour of it.

I will read the Resolution:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

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1. C.A.D. 22, January 1947. pp. 323-24.

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2. WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and

3. WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

4. WHEREIN all power and authority of the sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

5. WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, worship, vocation, association and action subject to law and public morality; and

6. WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

7. WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations, and

8. This ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

(The Hon'ble the President then read a Hindi translation of the Resolution.)

I have got the Urdu translation also. Unfortunately I am not able to read it. I shall be glad if some other Member could read it for me.

(Shri Mohanlal Saksena then read the Urdu translation of the Resolution.)

Mr. President: I will request Members now to stand in their places and vote in favour of this Resolution.

The Resolution was adopted, all Members standing.

STATEMENT BY PRESIDENT REGARDING ALLEGATIONS IN  
PARLIAMENT ABOUT THE REPRESENTATIVE CHARACTER  
OF THE CONSTITUENT ASSEMBLY<sup>1</sup>

Mr. President: Before we begin, I should like to make two statements in connection with certain matters.

In the course of the debates on India in the House of Commons and in the House of Lords in December last, certain statements were made detracting from the representative character of this Assembly during its last session. Notable among those who spoke in this strain were Mr. Churchill and Viscount Simon. Mr. Churchill observed that the Assembly, as it was meeting then, represented "only one major community in India." Viscount Simon was more specific and referred to the Assembly as "a body of Hindus". He went on further to ask "whether this meeting of Caste Hindus at Delhi can be regarded by the Government as the Constituent Assembly they meant at all."

Both these gentlemen have held the highest offices of responsibility and have had a long and intimate connection with the affairs of India; and whatever may be their views on current political controversies, they would not, I am sure, like to make statements which are wholly contrary to facts and lead to mischievous inferences. It is for this reason that I have considered it necessary on this occasion formally to state the facts. Out of a total of 296 Members who were to take part in the preliminary session, 210 Members attended. These 210 Members consisted of 155 Hindus out of a total of 160, 30 Scheduled Caste representatives out of a total of 33, all the 5 Sikhs, 6 Indian Christians out of a total of 7, all the 5 representatives of Backward Tribes, all 3 Anglo-Indians, all 3 Parsis and 4 Muslims out of 80. The significant absence is of course that of the representatives of the Muslim League—an absence which we all deeply regret. But it is clear from the figures I have quoted that, with the exception of representatives of the Muslim League, every community in India, whatever the party affiliation of the persons representing that community, was represented in the Assembly; and, therefore, to describe the Assembly as representing 'only one major community in India' or as 'a body of Hindus' or as a 'meeting of Caste Hindus' is a complete travesty of facts. (*Cheers.*)

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1. C.A.D. 20 January, 1947, vol. II, p. 268.

## CONSIDERATION OF THE REPORT OF THE RULES COMMITTEE BY K. M. MUNSHI<sup>1</sup>

Mr. K. M. Munshi: Mr. Chairman, Sir, I have the honour to present to the House the Report of the Rules Committee. A copy of the Report is already before the Members of this House, and I only propose at this stage to draw the attention of the House to a few of the important features of the Rules. But before I do so, I invite the indulgence of the House towards the Rules Committee. The Rules Committee have been working under great pressure. As the House, Sir, knows very well, it is highly essential that before we disperse, we should have the Rules adopted and the organisation set functioning in order to complete the organisation of the Constituent Assembly. The Members of the Committee, I may mention, have devoted careful attention to every aspect of the Rules and we have had the assistance of the able and distinguished jurist, our Constitutional Adviser, Sir B. N. Rau. The Committee had done its best to give it as perfect a shape as is possible. But I dare say there may be many defects still left, and the House may find some discrepancies. I am sure, points of view may have been omitted; I seek therefore the indulgence of the House. These are the Rules of the Assembly. They can be altered or added to when we next meet. We can always add new points of view if some ones are omitted. But it is highly essential that we should adopt the Rules and appoint one or two committees which would keep the organisation of the Constituent Assembly going.

With these remarks, I would now shortly deal with some of the important points in the Rules so that the structure of the organisation which it is proposed to set up may be clear to the members of this House.

Sir, I may refer the House to Rule 2, Clause (d). We have altered the nomenclature to this extent that our permanent Chairman will be styled the President. The reason is two-fold. First of all, there are going to be a number of Chairmen of Sections, Chairmen of Committees, Chairmen of the Advisory Committees, and so on. It is necessary that the permanent Chairman should have a name which is easily distinguishable from other Chairmen. The second reason is that we are functioning as an independent body. For the moment, an organisation has been lent to this Assembly by the Government of India, but immediately the Rules are passed, we will have an organisation of our own, and the

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1. C.A.D. 21 December, 1946; Vol. I; pp. 167-71.

President will naturally be the highest executive authority of the organisation. The word 'Chairman' therefore would be inappropriate in its application to our Chairman as the head of the organisation. In this connection I may perhaps refer to Rule 27, subpara. (8)—

"The President shall be the guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority."

It is for this reason that the Rules Committee proposed that the permanent Chairman should be styled 'President'.

Chapter II deals with admission of members and vacation of seats. It is more or less mechanical, if I may so put it.

Chapter III deals with the business of the Assembly. It largely deals with the procedure to be adopted in conducting the business of the Assembly and its several branches. The only important provision is the one on page 5, containing Rule 7:

"The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly."

As the Chairman was pleased to say in his inaugural speech, we are a sovereign body, and as such it must solely depend upon us whether to dissolve the Assembly or not. This has been made clear in this Rule.

The next important rule to which I would like to draw your attention is Rule 15. Rule 15 lays down the quorum not only for the Assembly but for its branches. When a provincial constitution is being settled, it is required that the quorum should be at least two-fifths of the representatives of that province.

The next important point to which I would like to draw the attention of the House is Rule 18. It lays down that—

"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member unacquainted with either language to address the Assembly in his mother tongue. The Chairman shall make arrangements for giving the Assembly, whether (*sic*) he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the Assembly."

Only a few minutes ago there was a complaint from a member who did not know English that he did not understand what

## REPORT OF THE RULES COMMITTEE

was going on. This Rule is intended to obviate that difficulty. Sub-clause 2 of the Rule says this:

"The official records of the Assembly shall be kept in Hindustani (both Hindi and Urdu) and English."

"The result is that our official record will be kept in 3 languages, Hindi, Urdu and English."

The next important point is dealt with in Rules 23 and 23-A on page 9. This follows the procedure laid down in the Cabinet Mission's Statement.

"In all matters relating to the procedure of the conduct of business, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision."

That forms part of the Statement.

"Provided further that no Section shall trespass upon the functions of the Union Assembly or vary any decision of the Union Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement."

The Advisory Committee's functions have been set out in detail in Rule 23-A.

"It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals and to make a report to the Assembly upon fundamental rights, clauses for the protection of minorities and the administration of tribal and excluded areas; and it shall be the exclusive function of the Assembly to take decisions upon such report and further to decide the question of the incorporation of these rights in the appropriate part of the Constitution."

The function of the Advisory Committee is to deal with the specific matters in view of India as a whole, as also in view of the provincial difficulties. And therefore according to Rule 20 they have to be considered by the Union Assembly when it meets.

Chapter IV deals with the President and the procedure for filling up vacancies if and when it arises. These are more or less formal as the House will see.

Chapter V deals with the Vice-Presidents, and it is proposed that there should be 5 Vice-Presidents. Two should be elected by the House, while the President of each Section, when a section

elects its Chairman, will be an ex-officio Vice-President of the Assembly, with the result that the President and the 5 Vice-Presidents will meet together and co-ordinate all the activities of the Assembly and its different branches.

Chapter VI deals with the office of the Constituent Assembly. It is divided into two branches, the Advisory Branch and the Administrative Branch; the Constitutional Adviser will be the head of the Advisory Branch, while the full time Secretary shall be the head of the Administrative Branch.

Chapter VII deals with the Committees and the first and perhaps the most important of the Committees is the Steering Committee, and as Hon'ble Members will see, in Rule 39, the functions of the Steering Committee have been defined. The business of the Steering Committee, as constituted therein, is to group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments; and to act as a general liaison body between the Assembly and its Office, between the Sections *inter se*, between Committees *inter se* and between the President and any part of the Assembly. Thus it becomes the central administrative organisation which will co-ordinate the different activities of the Assembly in all its branches.

Then follows the constitution of the Staff and Finance Committee. The Credentials Committee have also to be appointed for the purpose of deciding questions relating to the validity of the title of elected or other members. There is provision also made for other Committees.

Chapter VIII deals with the Budget.

Chapter IX deals with salaries and allowances which have to be approved by the Staff and Finance Committee.

Then Chapter X deals with doubts and disputes as to elections. Those provisions are more or less mechanical and follow the general lines of those legislations which deal with disputed elections in India. The only important point which is left out is dealt with in Rule 55. Rule 55 says:

“Where such a recommendation has been made the President shall appoint an Election Tribunal consisting of one or more than one person to inquire into the petition.”

Now so far as the matters to be dealt with by the Tribunal are concerned, they cannot form part of the Rules. What it will be doing is to adjudicate upon the status of a Member of this House and it is felt that could only be done by an Ordinance, so that it can become part of the law. Otherwise serious difficulties are likely



## REPORT OF THE RULES COMMITTEE

to arise. It will be therefore for the President to move the appropriate authority for the purpose of issuing the necessary Ordinance.

Chapter XI deals with certain provisions about taking the opinion of the whole country and the provincial constitution. As the House can see, Rule 58(1) deals with provisions to give an opportunity to the several Provinces and States through their legislatures to formulate their views upon the resolutions of the Assembly, outlining the main features of the Constitution, or, if the Assembly so decides, upon the preliminary draft of the Constitution.

Then clause 2 provides a similar opportunity to the Provinces concerned to formulate their views on their respective Constitutions. It says—

“Before the constitution of any province is finally settled, an opportunity shall be given to it to formulate, within such time as may be fixed for the purpose, its views, upon the resolutions and the decisions of the Sections, etc.”

This naturally gives the whole country an opportunity to consider the various proposals that may be discussed by the Assembly, the Sections or any other Committee dealing with parts of the Constitution.

Rule 59 deals with the application of the principle of proportionate representation to all our elections. The amendment of the Rules is dealt with in Rule 61, and Rule 62 provides that the provisions of these Rules shall apply *mutatis mutandis* to the Sections and the Committees of the Assembly. The Sections may make standing orders not inconsistent with these rules.

Rule 63 gives the power to the President to deal with difficulty, if any, which may arise in carrying out these Rules. This is the general frame-work of the Rules and I hope it will meet with the acceptance by the House. I therefore now formally present the report of the Committee to the House and I further beg to move also that in order to secure informality of discussion and despatch, the House do go into a Committee of the whole Assembly and that its proceedings may be held in camera.

## PART SIX

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### STATEMENT BY MR. ATTLEE, PRIME MINISTER, IN THE HOUSE OF COMMONS, ON 20 FEBRUARY 1947<sup>1</sup>

1. It has long been the policy of successive British Governments to work towards the realization of self-government in India. In pursuance of this policy, an increasing measure of responsibility has been devolved on Indians, and today the civil administration and the Indian armed forces rely to a very large extent on Indian civilians and officers. In the constitutional field, the Acts of 1919 and 1935 passed by the British Parliament each represented a substantial transfer of political power. In 1940 the Coalition Government recognised the principle that Indians should themselves frame a new Constitution for a fully autonomous India, and in the offer of 1942 they invited them to set up a Constituent Assembly for this purpose as soon as the war was over.

2. His Majesty's Government believe this policy to have been right and in accordance with sound democratic principles. Since they came into office, they have done their utmost to carry it forward to its fulfilment. The declaration of the Prime Minister of the 15th March last, which met with general approval in Parliament and the country, made it clear that it was for the Indian people themselves to choose their future status and Constitution and that in the opinion of His Majesty's Government the time had come for responsibility for the government of India to pass into Indian hands.

3. The Cabinet Mission which was sent to India last year spent over three months in consultation with Indian leaders in order to help them to agree upon a method for determining the future Constitution of India, so that the transfer of power might be smoothly and rapidly effected. It was only when it seemed clear that without some initiative from the Cabinet Mission agreement was unlikely to be reached that they put forward proposals themselves.

4. These proposals, made public in May last, envisaged that the future constitution of India should be settled by a Constituent Assembly composed, in the manner suggested therein, of representatives of all communities and interests in British India and of the Indian States.

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1. *The Indian Annual Register*, 1947; Vol. I; pp. 142-3.

5. Since the return of the Mission, an Interim Government has been set up at the Centre composed of the political leaders of the major communities, exercising wide powers within the existing Constitution. In all the Provinces Indian Governments responsible to Legislatures are in office.

6. It is with great regret that His Majesty's Government find that there are still differences among Indian parties which are preventing the Constituent Assembly from functioning as it was intended that it should. It is of the essence of the Plan that the Assembly should be fully representative.

7. His Majesty's Government desire to hand over their responsibility to authorities established by a Constitution approved by all parties in India in accordance with the Cabinet Mission's plan. But unfortunately there is at present no clear prospect that such a Constitution and such authorities will emerge. The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948.

8. This great sub-continent now containing over four hundred million people has for the last century enjoyed peace and security as a part of the British Commonwealth and Empire. Continued peace and security are more than ever necessary today if the full possibilities of economic development are to be realized and a higher standard of life attained by the Indian people.

9. His Majesty's Government are anxious to hand over their responsibilities to a Government which, resting on the sure foundation of the support of the people, is capable of maintaining peace and administering India with justice and efficiency. It is, therefore, essential that all parties should sink their differences in order that they may be ready to shoulder the great responsibilities which will come upon them next year.

10. After months of hard work by the Cabinet Mission a great measure of agreement was obtained as to the method by which a Constitution should be worked out. This was embodied in their statement of May last. His Majesty's Government then and there agreed to recommend to Parliament a Constitution worked out in accordance with the proposals made therein by a fully representative Constituent Assembly. But if it should appear that such a Constitution will not have been worked out by a fully representative Assembly before the time mentioned in paragraph 7, His Majesty's Government will have to consider to whom the powers of the Central

Government in British India should be handed over, on the due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people.

11. Although the final transfer of authority may not take place until June 1948, preparatory measures must be put in hand in advance. It is important that the efficiency of the civil administration should be maintained and that the defence of India should be fully provided for. But inevitably, as the process of transfer proceeds, it will become progressively more difficult to carry out to the letter all the provisions of the Government of India Act, 1935. Legislation will be introduced in due course to give effect to the final transfer of power.

12. In regard to the Indian States, as was explicitly stated by the Cabinet Mission, His Majesty's Government do not intend to hand over their powers and obligations under Paramountcy to any Government of British India. It is not intended to bring Paramountcy, as a system, to a conclusion earlier than the date of the final transfer of power, but it is contemplated that for the intervening period the relations of the Crown with individual States may be adjusted by agreement.

13. His Majesty's Government will negotiate agreements in regard to matters arising out of the transfer of power with representatives of those to whom they propose to transfer power.

14. His Majesty's Government believe that British commercial and industrial interests in India can look forward to a fair field for their enterprise under the new conditions. The commercial connection between India and the United Kingdom has been long and friendly and will continue to be to their mutual advantage.

15. His Majesty's Government cannot conclude this statement without expressing on behalf of the people of this country their goodwill and good wishes towards the people of India as they go forward to this final stage in their achievement of self-government. It will be the wish of every one in these Islands that, notwithstanding constitutional changes, the association of the British and Indian peoples should not be brought to an end; and they will wish to continue to do all that is in their power to further the well-being of India.

16. The House will wish to know of an announcement which is being made public today. Field Marshall the Right Honourable Viscount Wavell was appointed Viceroy in 1943, after having held high military command in the Middle-East, South-East Asia and India

## RESOLUTION OF THE CONGRESS WORKING COMMITTEE

with notable distinction since the beginning of the war. It was agreed that this should be a war-time appointment. Lord Wavell has discharged this high office during this very difficult period with devotion and a high sense of duty. It has, however, seemed that the opening of a new and final phase in India is an appropriate time to terminate this war appointment. His Majesty has been pleased to approve, as successor to Lord Wavell, the appointment of Admiral the Viscount Mountbatten, who will be entrusted with the task of transferring to Indian hands responsibility for the government of British India in a manner that will best ensure the future happiness and prosperity of India. The change of office will take place during March. The House will be glad to hear that His Majesty has been pleased to approve the conferment of an Earldom on Viscount Wavell.

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## RESOLUTION OF THE WORKING COMMITTEE OF THE INDIAN NATIONAL CONGRESS, DATED 6-8 MARCH 1947<sup>1</sup>

The Working Committee welcome the declaration made on behalf of the British Government of their definite intention to transfer power finally by a date not later than June 1948 and to take steps to that end in advance.

The transfer of power, in order to be smooth, should be preceded by the recognition in practice of the Interim Government as a Dominion Government with effective control over the Services and administration and the Viceroy and Governor-General functioning as the constitutional head of the Government. The Central Government must necessarily function as a cabinet with full authority and responsibility. Any other arrangement is incompatible with good government and is peculiarly dangerous during a transitional period full of political and economic crisis.

The Congress has already expressed its acceptance of the British Cabinet Mission's scheme of May 16, 1946, and has further accepted the interpretations put upon it by the British Cabinet on December 6, 1946. In accordance therewith, the Constituent Assembly has been functioning and has appointed various committees to carry on its work. It has become all the more essential now to expedite this work so that the Constitution for an Indian Union and its constituent units should be finally prepared and given effect to well within the stated period to facilitate the final transfer of power.

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1. *The Indian Annual Register*, 1947, Vol. I, pp. 117-18.

The Working Committee welcome the decision of a number of States to join the Constituent Assembly and trust that all the States and their peoples will be effectively represented in this task of making a constitution for an Indian Union. The Committee invite afresh the representatives of the Muslim League, who have been elected to the Constituent Assembly, to join in this historic undertaking.

The work of the Constituent Assembly is essentially voluntary. The Working Committee have frequently stated that there can or should be no compulsion in the making of a Constitution for India. It is the fear of compulsion or coercion that has given rise to distrust and suspicion and conflict. If this fear goes, as it must, it will be easy to determine India's future so as to safeguard the rights of all communities and give equal opportunities to all. It has been made clear that the Constitution framed by the Constituent Assembly will apply only to those areas which accept it. It must also be understood that any Province or part of a Province which accepts the Constitution and desires to join the Union cannot be prevented from doing so. Thus there must be no compulsion either way, and the people will themselves decide their future. This peaceful and co-operative method is the only way to make democratic decision with the maximum of consent.

In this hour when final decisions have to be taken and the future of India has to be shaped by Indian minds and hands, the Working Committee earnestly call upon all parties and groups, and all Indians generally to discard violent and coercive methods, and co-operate peacefully and democratically in the making of the Constitution. The time for the decision has come and no one can stop it or stand by and remain unaffected. The end of an era is at hand and a new age will soon begin. Let this dawn of the new age be ushered in bravely, leaving hates and discords in the dead past.

In view of new developments which are leading to a swift transfer of power in India, it has become incumbent on the people of India to prepare themselves jointly and co-operatively for this change, so that this may be effected peacefully and to the advantage of all. The Working Committee, therefore, invite the All-India Muslim League to nominate representatives to meet representatives of the Congress in order to consider the situation that has arisen and to devise means to meet it.

The Working Committee will keep in close touch with the representatives of the Sikhs and other groups concerned, with a view to co-operating with them in the steps that may have to be taken and in safeguarding their interests.

STATEMENT CONTAINING THE FINAL DECISION OF HIS MAJESTY'S GOVERNMENT REGARDING THE METHOD OF TRANSFER OF POWER, DATED 3 JUNE, 1947<sup>1</sup>

1. On February 20th, 1947, His Majesty's Government announced their intention of transferring power in British India to Indian hands by June 1948. His Majesty's Government had hoped that it would be possible for the major parties to co-operate in the working out of the Cabinet Mission's Plan of May 16th, 1946 and evolve for India a Constitution acceptable to all concerned. This hope has not been fulfilled.

2. The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province and the representatives of Delhi, Ajmer-Marwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives of Bengal, the Punjab and Sind as also the representative of British Baluchistan, have decided not to participate in the Constituent Assembly.

3. It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the absence of such an agreement, the task of devising a method by which the wishes of the Indian people can be ascertained has devolved on His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention of attempting to frame any ultimate Constitution for India; this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

4. It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a consequence of this announcement, the Muslim League representatives of those provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those

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1. *The Indian Annual Register*, 1947, vol. 1, pp. 143-6.



parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issues whether their Constitution is to be framed (a) in the existing Constituent Assembly (b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly. When this has been done, it will be possible to determine the authority or authorities to whom power should be transferred.

5. The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will therefore, each be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the Province. For the purpose of determining the population of districts, the 1941 census figures will be taken as authoritative. The Muslim-majority districts in these two Provinces are set out in the Appendix to this announcement.

6. The Members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements will be made accordingly.

7. Before the question as to the partition is decided, it is desirable that the Representatives of each part should know in advance which Constituent Assembly the Province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the Province as a whole would join if it were decided by the two parts to remain united.

8. In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf of the areas they represent, decide which of the alternatives in paragraph 4 above to adopt.

9. For the immediate purpose of deciding on the issue of partition, the Members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim-majority districts (as laid down in the Appendix) and non-Muslim Majority districts. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these Provinces a detailed investigation of boundary questions will be needed; and as soon as a decision involving partition has been taken for either Province, a Boundary Commission will be set up by the Governor-General, the membership and terms of reference of which will be

## DECISION OF HIS MAJESTY'S GOVERNMENT

settled in consultation with those concerned.<sup>1</sup> It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors. Similar instructions will be given to the Bengal Boundary Commission. Until the report of a Boundary Commission has been put into effect, the provisional boundaries indicated in the Appendix will be used.

10. The Legislative Assembly of Sind (excluding the European Members) will, at a special meeting, also take its own decision on the alternatives in paragraph 4 above.

11. The position of the North-West Frontier Province is exceptional. Two of the three representatives of this Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the existing Constituent Assembly, it will be necessary to give the North-West Frontier Province an opportunity to reconsider its position. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned in paragraph 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the Provincial Government.

12. British Baluchistan has elected a Member but he has not taken his seat in the existing Constituent Assembly. In view of its geographical situation, this Province will also be given an opportunity to reconsider its position and to choose which of the alternatives in paragraph 4 above to adopt. His Excellency the Governor-General is examining how this can most appropriately be done.

13. Though Assam is predominantly a non-Muslim Province, the district of Sylhet which is contiguous to Bengal is predominantly Muslim. There has been a demand that, in the event of the partition of Bengal, Sylhet should be amalgamated with the Muslim part of Bengal. Accordingly, if it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the Assam Provincial Government to decide whether the district of Sylhet should continued to form part of the Assam Province or should be amalgamated with the new province of Eastern Bengal if that Province agrees. If the referendum results in favour of amalgamation with

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1. Separate Boundary Commissions for the partition of Bengal and the Punjab were appointed under the Chairmanship of Sir Cyril Radcliffe.

Eastern Bengal, a Boundary Commission with terms of reference similar to those for the Punjab and Bengal will be set up to demarcate the Muslim-majority areas of Sylhet district and contiguous Muslim-majority areas of adjoining districts which will then be transferred to Eastern Bengal. The rest of the Assam Province will in any case continue to participate in the proceedings of the existing Constituent Assembly.

14. If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the scale of one for every million of population according to the principle contained in the Cabinet Mission's Plan of May 16th, 1946. Similar elections will also have to be held for Sylhet in the event of its being decided that this district should form part of East Bengal. The number of representatives to which each area would be entitled is as follows:

Province	General	Muslims	Sikhs	Total
Sylhet District	1	2	Nil	3
West Bengal	15	4	Nil	19
East Bengal	12	29	Nil	41
West Punjab	3	12	2	17
East Punjab	6	4	2	12

15. In accordance with the mandates given to them, the representatives of the various areas will either join the existing Constituent Assembly or form the new Constituent Assembly.

16. Negotiations will have to be initiated as soon as possible on the administrative consequences of any partition that may have been decided upon.—

- (a) Between the representatives of the respective successor authorities about all subjects now dealt with by the Central Government including Defence, Finance and Communications;
- (b) Between different successor authorities and His Majesty's Government for treaties in regard to matters arising out of the transfer of power;
- (c) In the case of Provinces that may be partitioned, as to the administration of all Provincial subjects, such as the division of assets and liabilities, the police and other services, the High Courts, provincial institutions, etc.

## DECISION OF HIS MAJESTY'S GOVERNMENT

17. Agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority.

18. His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of May 12th 1946, remains unchanged.

19. In order that the successor authorities may have time to prepare themselves to take over power, it is important that all the above processes should be completed as quickly as possible. To avoid delay, the different Provinces or parts of Provinces will proceed independently as far as practicable within the conditions of this Plan. The existing Constituent Assembly and the new Constituent Assembly (if formed) will proceed to frame constitutions for their respective territories; they will, of course, be free to frame their own rules.

20. The major political parties have repeatedly emphasised their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date June 1948 for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly, as the most expeditious, and indeed the only practicable way of meeting this desire, His Majesty's Government propose to introduce legislation during the current session for the transfer of Power this year on a Dominion Status basis to one or two successor authorities according to the decision taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assembly to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth.

21. His Excellency the Governor-General will from time to time make such further announcements as may be necessary in regard to procedure or any other matters for carrying out the above arrangements.

## APPENDIX

(Vide paragraph 5 of the Statement)

Muslim-majority districts of the Punjab and Bengal according to 1941 census.

1. *Punjab.*

*Lahore Division:* Gujranwala, Gurdaspur, Lahore, Sheikhpora, Sialkot.

*Rawalpindi Division:* Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur.

*Multan Division:* Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan, Muzaffargarh.

2. *Bengal.*

*Chittagong Division:* Chittagong, Noakhali, Tipperah.

*Dacca Division:* Bakarganj, Dacca, Faridpur, Mymensingh.

*Presidency Division:* Jessore, Murshidabad, Nadia.

*Rajshahi Division:* Bogra, Dinajpur, Malda, Pabna, Rajshahi, Rangpur.

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BROADCAST MESSAGE OF PANDIT JAWAHARLAL NEHRU,  
3 JUNE 1947<sup>1</sup>

Friends and Comrades: Nearly nine months ago, soon after my assumption of office, I spoke to you from this place. I told you then that we were on the march and the goal had still to be reached. There were many difficulties and obstacles on the way and our journey's end might not be near, for that end was not the assumption of office in the Government of India but the achievement of the full independence of India and the establishment of a co-operative commonwealth in which all will have equal shares in opportunity and in all things that give meaning and value to life.

Nine months have passed, months of sore trial and difficulty, of anxiety and sometimes even of heartbreak. Yet looking back at this period with its suffering and sorrow for our people there is much on the credit side also, for India has advanced nationally and internationally, and is respected today in the councils of the world. In the domestic sphere something substantial has been achieved though the burden on the common man still continues to be terribly heavy and millions lack food and cloth and other necessities of life. Many vast schemes of development are nearly ready and yet it is true that most of our dreams about the brave things we are going to accomplish have still to be realised.

You know well the difficulties which the country had to face, economic, political and communal. These months have been full of

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1. *The Indian Annual Register*, 1947, I. pp. 251-52.

tragedy for millions and the burden on those who have the governance of the country in their hands has been great indeed.

My mind is heavy with the thought of the sufferings of our people in the areas of disturbance—the thousands who are dead and those, especially our womenfolk, who have suffered agony worse than death. To their families and to the innumerable people who have been uprooted from their homes and rendered destitute I offer my deepest sympathy and assurance that we shall do all in our power to bring relief. We must see to it that such tragedies do not happen again. At no time we lost faith in the great destiny of India which takes shape, even though with travail and suffering. My great regret has been that during this period, owing to excess of work, I have been unable to visit the numerous towns and villages of India, as I used to do, to meet my people and to learn about their troubles at first-hand.

Today I am speaking to you on another historic occasion when a vital change affecting the future of India is proposed. You have just heard an announcement on behalf of the British Government. This announcement lays down a procedure for self-determination in certain areas of India. It envisages on the one hand the possibility of these areas seceding from India; on the other, it promises a big advance towards complete independence. Such a big change must have the full concurrence of the people before effect can be given to it, for it must always be remembered that the future of India can only be decided by the people of India, and not by any outside authority, however friendly.

These proposals will be placed soon before the representative assemblies of the people for consideration. But meanwhile, the sands of time run out and decisions cannot await the normal course of events. So while we must necessarily abide by what the people finally decide, we had to come to certain decisions ourselves and to recommend them to the people for acceptance. We have, therefore, decided to accept these proposals and to recommend to our larger committees that they do likewise.

It is with no joy in heart that I commend these proposals to you, though I have no doubt in my mind that this is the right course. For generations we have dreamt and struggled for a free, independent and united India. The proposal to allow certain parts to secede if they so will is painful for any of us to contemplate. Nevertheless, I am convinced that our present decision is the right one even from the larger viewpoint. The united India that we have laboured for was not one of compulsion and of coercion but a free and willing association of a free people. It may be that in this way we

shall reach that united India sooner than otherwise and then she will have a stronger and more secure foundation.

There has been violence, shameful, degrading and revolting violence, in various parts of the country. This must end. We are determined to end it. We must make it clear that political ends are not to be achieved by methods of violence, now or in the future.

On this eve of great changes in India we have to make a fresh start with clear vision and firm mind, with steadfastness and tolerance, and with a stout heart. We should not wish ill to anyone but think always of every Indian as our brother and comrade. The good of the four hundred millions of Indians must be our supreme objective. We shall seek to build anew our relations with England on a friendly and co-operative basis forgetting the past which has leaned so heavily on us.

I should like to express on this occasion my deep appreciation of the labours of the Viceroy, Lord Mountbatten, since his arrival here at a critical juncture in our history.

Inevitably, on every occasion of crises and difficulties we think of our great leader Mahatma Gandhi who has led us unfalteringly for over a generation through darkness and sorrow to the threshold of our freedom. To him we once again pay our homage. His blessings and wise counsel will happily be with us in the momentous years to come as always.

We are little men serving a great cause, but because the cause is great something of that greatness falls upon us also. Mighty forces are at work in the world today and in India, and I have no doubt that we are ushering in a period of greatness for India. The India of geography, of history and tradition, the India of our minds and hearts, cannot change.

On this historic occasion each one of us must pray that he might be guided aright in the service of his motherland and humanity at large. We stand on a watershed dividing the past from the future. Let us bury that past in so far as it is bad and forget all bitterness and recriminations; let there be moderation in speech and in writing; let there be strength and perseverance in adherence to the cause and the ideals we have at heart. Let us face the future not with easy optimism or any complacency or weakness but with confidence and firm faith in India.

With a firm faith in our future I appeal to you to co-operate in the great task ahead and to march together to haven of freedom for all in India. Jai Hind.



BROADCAST MESSAGE BY MR. M. A. JINNAH, 3 JUNE 1947<sup>1</sup>

I am glad that I am afforded the opportunity to speak to you directly through this radio from Delhi. This is the first time, I believe, that a non-official has been afforded an opportunity to address the peoples through the medium of this powerful instrument, direct to the peoples on political matters. It augurs well. And I hope in the future I shall have greater facilities to enable me to voice my views and opinion which will reach directly to you life-warm rather than in the cold print of the newspapers.

The statement of His Majesty's Government embodying the plan for the transfer of power to the peoples of India has already been broadcast and will be released to the press to be published in India and abroad tomorrow morning. With these outlines of the Plan it is for us to give it our most earnest consideration. We have to examine it coolly, calmly and dispassionately. We must remember that we have to take momentous decisions and handle grave issues facing us in the solution of the complex political problem of this great sub-continent inhabited by 400 millions of people. The world has no parallel for the most onerous and difficult task which we have to perform.

Great responsibilities lie particularly on the shoulders of Indian leaders. Therefore, we must galvanize and concentrate all our energies, to see that the transfer of power is effected in a peaceful and orderly manner.

I must earnestly appeal to every community and particularly to Muslim India to maintain peace and order.

We must examine the Plan, its letter and spirit and come to our conclusions and take our decisions. I pray to God that at this critical moment He may guide us and enable us to discharge our responsibilities in a wise and statesmanlike manner having regard to the sum total of the Plan as a whole.

It is clear that the Plan does not meet in some important respects our point of view; and we cannot say or feel that we are satisfied or agree with some of the matters dealt with by the Plan.

It is for us now to consider whether the Plan as presented to us by His Majesty's Government should be accepted by us as a compromise or a settlement. On this point I do not wish to pre-

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1. *The Indian Annual Register*, 1947, I, pp. 253-54.

judge the decisions of the Council of the All-India Muslim League which has been summoned to meet on Monday, 9th of June.

Final decision can only be taken by that Council according to our constitution, precedents and practice. But so far as I have been able to gather, on the whole I find the reaction in the Muslim League circles in Delhi has been hopeful.

Of course, the Plan has got to be very carefully examined in its pros and cons before a final decision can be taken. But I must say that I feel that the Viceroy has battled against various forces very bravely and the impression that he has left on my mind is that he was actuated by a high sense of fairness and impartiality. It is up to us now to make his task less difficult and help him as far as it lies in our power in order that he may fulfil his mission of transferring power to the peoples of India in a peaceful and orderly manner.

Now, the Plan that has been broadcast already makes it clear in paragraph 11 that a referendum will be made to the electorates of the present Legislative Assembly in the North-West Frontier Province who will choose which of the two alternatives in paragraph 4 they wish to adopt. Referendum will be held under the aegis of the Governor-General in consultation with the Provincial Government. Hence it is clear that the verdict and the mandate of the people of the Frontier Province will be obtained as to whether they want to join the Pakistan Constituent Assembly or the Hindusthan Constituent Assembly.

In these circumstances I request the Provincial Muslim League of the Frontier to withdraw the movement of peaceful civil disobedience which they had been forced to resort to and I call upon all the leaders of the Muslim League and Mussalmans generally to organize our people to face this referendum with hope and courage and I feel confident that the people of the Frontier will give their verdict by a solid vote to join the Pakistan Constituent Assembly.

I cannot but express my appreciation of the sufferings and sacrifices made by all classes of Mussalmans and particularly the great part the women of the Frontier played in the fight for our civil liberties. Without apportioning blame, and this is hardly the moment to do so, I deeply sympathise with all those who have suffered, those who died and whose properties were subjected to destruction. I fervently hope that the Frontier will go through this referendum in a peaceful manner and it should be the anxiety of everyone to obtain a fair, free and true verdict of the people. Once again, I most earnestly appeal to all to maintain peace and order. Pakistan Zindabad.

SARDAR PATEL ON IMPLICATIONS OF INDIA BILL<sup>1</sup>

"This is a Bill, the object of which is to transfer power as quickly as possible," declared Sardar Vallabhbhai Patel, member of Information and Broadcasting, presiding over a Press Conference at which Mr. V. P. Menon, Reforms Commissioner, explained the implications of the Indian Independence Bill.

"This is a Bill the object of which is to transfer power as quickly as possible. It is not that on all points everybody can be satisfied. There may be some lacunae, some gaps, some difficulties and some doubts but all constitutions are like that. Constitutions are amended by exigencies of circumstances and in this country there are many circumstances which will create difficulties. No Bill or constitution can deal with all these difficulties. On the whole, one thing is certain, on August 15 India is completely free. That is the greatest achievement of India and one may say, it is one of the greatest acts done in history by any Power".

Sardar Patel said that in the history of the British Parliament, there was hardly any other instance in which a bill had been introduced and was expected to be passed so quickly as the present Bill.

Mr. Menon, he added, "had made no mean contribution in the making of this draft so far as the Government of India's point of view was concerned."

Intervening in the course of the conference, Sardar Patel revealed that it had been agreed between the parties concerned to refer to a judicial tribunal all points of dispute regarding the division of assets and liabilities.

Mr. V. P. Menon stated that the Press Conference was convened at the instance of the Viceroy who personally asked Sardar Patel to preside and that he was grateful that Sardar Patel had been able to accept the invitation. Mr. Menon added that the views he would put forward in the course of the conference would be his personal views, but on one point they would represent the authoritative views of the Viceroy and His Majesty's Government. This point was clause 6 of the Bill.

He said that Clause 6 was the pivotal provision in the Bill establishing beyond doubt or dispute the sovereign character of the Legislature of each of the new Dominions and giving them the fullest measure of Independence.

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1. *The Times of India*, July 7, 1947.

## INDIAN CONSTITUTIONAL DOCUMENTS

Sub-clauses (2), (4) and (5) removed every possible element of subordination to, or dependence on, the Parliament of the United Kingdom. In particular, the power to amend or repeal "this or any existing or future Act of Parliament", in so far as it affected the Dominion, constituted a complete and unreserved transfer of sovereign power.

Sub-clause (6) was inserted to show that the Constituent Assembly for each Dominion could constitute a federation by voluntarily limiting its own plenary power as the legislature for the Dominion and giving... autonomy to provincial legislatures in respect of particular subjects.

### COMPLETE INDEPENDENCE

Asked whether Section 1 prevented the British Parliament from recognising subsequently any Dominions other than the two in India, Mr. Menon said that, on the face of it, it did not, but there were other difficulties.

Sardar Patel: "The jurisdiction of Parliament over India has ended with this Bill. It has nothing to do with India hereafter."

*Question:* "Supposing Hyderabad applied for Dominion status in the British Commonwealth, what will be the position?"

Mr. Menon: "Hyderabad can certainly apply for Dominion status but whether the British Government will agree is another matter."

*Question:* "Is there any understanding that the British Government will not recognise any other Dominion in India?"

Mr. Menon: "I think it is very difficult for His Majesty's Government to recognise a Dominion other than these two behind their back."

Referring to the status of Berar, Mr. Menon said that Berar was not included in the Indian Dominion under this Bill.

*Question:* "Does this mean that unless the Nizam agrees to continue the present status, Berar automatically goes to Hyderabad?"

Mr. Menon: "It does not go; physically Berar is part of the C.P. now."

### ACTUAL POSITION

Replying to a further question, Mr. Menon said that legally it would be correct to say that representatives of Berar would not

be entitled to sit in the Constituent Assembly but the actual position was different. Berar continued to be a part of the Central Provinces physically. The whole question of Berar was a matter for negotiation not interpretation, and he did not think that the Nizam would be unreasonable in this regard.

Mr. Menon explained that the Andamans would continue to be part of the Indian Dominion.

Referring to the international status of the two Dominions, Mr. Menon said that the question could not be finally decided by Parliamentary legislation; it was a matter for international authorities like U.N.O. and other countries. To-day India had sent accredited representatives. The inference could legitimately be drawn that the new Dominion of India would continue to be the existing international personality of British India, and Pakistan would be regarded as a new country.

*Question:* "India minus Pakistan is still India?"

Mr. Menon: "Yes."

Replying to a question about the Boundary Commissions, Mr. Menon said that the Commissions' awards would be automatically implemented by the Governor-General. The Governor-General could not change the award.

Sardar Patel, answering a question on the proviso in Section 7 whereby agreements relating to customs, transit and communications, posts and telegraphs or other like matters could be denounced by the Ruler of an Indian State or person having authority in the tribal areas on the one hand or by the Dominion or Province on the other, said, "Whoever denounces such agreements takes the responsibility for the consequences."

Explaining the clause on temporary provisions as to the Governments of each of the new Dominions, Mr. Menon said that a distinction had been made between the Constitution-making functions of the Constituent Assembly and its ordinary legislative functions. Where the Constituent Assembly functioned as the Central Legislature of the Dominion (but not when it was making the constitution of the Dominion), it would be bound by the existing distribution of legislative power between the Centre and the Provinces.

When it functioned as the Central Legislature it would have all the powers of the Indian legislature under the existing constitution, for example, the power to put questions to Government, pass resolutions, consider and pass the budget, etc.

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## SECOND READING OF THE BILL

## (i)

The Prime Minister (Mr. Attlee): I have it in Command from His Majesty to acquaint the House that he places his Prerogative and interests, so far as concerns the matters dealt with by the Bill, at the disposal of the Parliament.

I beg to move, "That the Bill be now read a Second time."

I am afraid I shall have to ask the indulgence of the House for taking up more of its time than is my custom, but the theme is a great one. There will also be passages which I am afraid I shall have to read, as verbal accuracy in dealing with some high matters is important. This Bill brings to an end one chapter in the long connection between Britain and India, but it opens another. British rule which has endured so long is now, at the instance of this country, coming to an end.

There have been many instances in history when States at the point of the sword have been forced to surrender government over another people. It is very rare for a people that have long enjoyed power over another nation to surrender it voluntarily. My mind recalls as the nearest parallel the action of the Liberal Government of Sir Henry Campbell Bannerman, in 1906, when he gave back to the Dutch in South Africa the freedom to manage their own affairs which they had lost in the South African war. That was a great act of faith, an act of faith which bore fruit both in 1914 and 1939. I have often heard that great South African statesman, General Smuts, describing it as marking the end of imperialism. I regret, and I am sure the House will regret, that the statesman, who was then a young Under-Secretary, who had the honour of announcing the decision of the Government to extend responsible government to the Transvaal 41 years ago—the right hon. Gentleman the leader of the Opposition—is not, for reasons which we all know, able to be present at our debate today.

One would be tempted to speak at length on the history of the British in India, but that would take up far too much time. I would only allude to a few points. The history of our connection in India begins with our trading ventures, the story of the East India Company. It goes on with the contest with the French for the mastery of the peninsula, the gradual extension of British power,

1. Parliamentary Debates, House of Commons, July 10, 1947, Fifth series, vol. 439, 1946-47; cols. 2441-2462.

partly by conquest but still more by voluntary cession of authority to the British by those who sought, under our aegis, the peace and security often denied to them during the anarchic period that followed the breakdown of the Mogul Empire.

We can recall how, 90 years ago, the Government of the East India Company came to an end when Parliament assumed responsibility for Indian affairs. During those long years there has been a change in the spirit of British administration. In the earlier days we were concerned mainly with the trade providing opportunities for making fortunes. In the eighteenth century British citizens returning from India had often made fortunes and were known as nabobs. But, as time went on, there was an increasing appreciation of the responsibility which fell to the government of the East India Company, a responsibility for the lives of many millions who sought justice and a quiet life. The British administrator in India became more and more deeply concerned with the well-being of the people of India, the well-being of that great congeries of people divided by race, by caste, language and religion in this sub-continent.

To this change of spirit the House of Commons, in many famous Debates from the time of Burke onwards, made a most notable contribution. Perhaps it is not always realised how early that change took place. It was long before the transfer of sovereignty to the Crown. In the early days of the nineteenth century, great men, such as Sir Thomas Munro in Madras, set the standards which have since been followed by so many who have served India. Looking back today over the years, we may well be proud of the work which our fellow citizens have done in India. There have, of course, been mistakes, there have been failures, but we can assert that our rule in India will stand comparison with that of any other nation which has been charged with the ruling of a people so different from themselves.

There has been a great succession of Viceroys who have made their particular contributions and sought to serve India faithfully. I think not least among them would be accounted the present Viceroy. There is a roll of names of eminent Governors of Provinces, high among which is that of the right hon. Gentleman the Member for Scottish Universities (Sir J. Anderson). There has been a multitude of administrators, soldiers, missionaries and others who have served India with great devotion and have loved the Indian people. In every part of India are the graves of those who died in her service. Not least among those who have served India are the men who in the difficult and exacting times of the last four decades, under the stress of two great wars with all their reper-



cussions on Indian life, have worked in the changing conditions that have resulted from the rise of Indian nationalism and the development of self-government.

May I recall here a thing that is not always remembered, that just as India owes her unity and freedom from external aggression to the British, so the Indian National Congress itself was founded and inspired by men of our own race, and further, that any judgment passed on our rule in India by Indians is passed on the basis, not of what obtained in the past in India, but on the principles which we have ourselves instilled into them. I am well aware that many of those who have been closely associated with India are anxious about the future of the millions for whom we are now relinquishing responsibility. I can understand their anxiety. They fear that the work to which they have devoted themselves for so many years may be brought to nought. They are anxious for those who would suffer most from a breakdown of administration—the poorest sections of the community.

We must all be anxious, but I think everybody realises that the service of Britain to India must now take another form. The constitutional change, vital as it is, does not, of course, mean the disappearance of the civilian European community in India. Not a few of those of the British race who have been in the Services in India will, we confidently expect, be willing, at the invitation of the two new Governments, to continue in official service in India and Pakistan. The business community in India has still, I am confident, a role to play in maintaining, between the population in India and this country, trade and commerce, to the great benefit of both. To all those men and women, who, although domiciled in the United Kingdom, are intending to remain in India or Pakistan, I would say: "You have a great task in front of you, namely, to cement the bonds of friendship between this country, India and Pakistan. You can accomplish at least as much in achieving this end as can the British Government."

Many years ago, when we began the association of Indians in the responsibility of government and set ourselves to train them in the methods of democracy, it was obvious that the time would come, sooner or later, when Indians would seek to secure the entire management of their own affairs. This was clear many years ago to some of our wisest administrators, and I quote from a letter of Mountstuart Elphinstone as long ago as 1854:

"The moral is that we must not dream of perpetual possession, but must apply ourselves to bring the natives into a state that will admit of their governing themselves in a manner that may be beneficial to our interests as well as their own, and that of the rest of the world; and to

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take the glory of the achievement and the sense of having done our duty for the chief reward of our exertions'".

It has been the settled policy of all parties in this country for many years that Indians, in course of time, should manage their own affairs. The question has always been how and when? It would, I think be unprofitable today to go back into the past and to question whether, if some particular action had been taken by a British Government earlier, or if a different line of conduct had been taken by the Indian political leaders on certain occasions, a more satisfactory solution might have been found than that which I am commending to the House today.

There are hon. Members of this House, such as the noble Lord the Member for Horsham (Earl Winterton) and the hon. Member for Aylesbury (Sir S. Reed), whose connection with the Indian problem goes back far beyond mine. Some 20 years ago, I was first brought into contact with it by being placed on the Simon Commission, and I think they would agree with me that the major difficulty that has faced all of us in considering the best way of achieving Indian self-government has been the absence of mutual trust and toleration between the communities. It has sometimes been said by our enemies that this was a difficulty created by ourselves in order to perpetuate our own rule. Nothing could be more untrue. This same difficulty, which faced Mr. Edwin Montagu and the Simon Commission, faced the President of the Board of Trade in his Mission and my three Cabinet colleagues in theirs, and it was still the outstanding difficulty of the present Viceroy when he took office. Everyone who has touched the Indian problem has been brought up against this stumbling-block. They have all wanted to maintain the unity of India, to give India complete self-government and to preserve the rights of minorities. Every one of them has hoped that a solution might be found without resorting to partition. I know that many Indians of all communities passionately desire this, but it has not been found to be practicable.

We and the Indian statesmen have had to accept the only alternative—partition. For myself, I earnestly hope that this severance may not endure, and that the two new Dominions which we now propose to set up may in course of time, come together again to form one great member State of the British Commonwealth of Nations. But this is entirely a matter for the Indians themselves. The demand for self-government has been insistently pressed for many years by the leaders of political thought in India, and has been stimulated by the external situation, and particularly by those great waves of nationalist feeling that accompanied both the great wars. This demand is not peculiar to India, but has spread throughout

Asia. It is the natural result of contact by dwellers in other continents with European political thought. The chief question has been as to how this desire could be gratified. Delay in granting it has always led to more and more extreme demands.

There has been a tendency to consider that nothing short of complete and absolute severance would satisfy this urge. There is a desire by some to cut every tie which connects them with their former rulers. On the other hand, in the age in which we live, there are very strong reasons which militate against the complete isolation which some demand. Many countries that long enjoyed their freedom and independence have lost it either permanently or temporarily, and some form of association with others for security and greater prosperity is the desire of many peoples. The League of Nations and the United Nations Organisation express the desire, but the one great practical example of how complete freedom and independence can be combined with inclusion in a greater whole is the British Commonwealth of Nations.

The British Commonwealth of Nations is so unique that its nature is still not fully comprehended, and even many of our American friends do not understand that the Dominions are as free as Great Britain. They do not appreciate that membership of the British Commonwealth, in the words of the Prime Minister of New Zealand, is "independence with something added, not independence with something taken away." In this Bill, we set up two independent Dominions, free and equal, of no less status than the United Kingdom or the Dominion of Canada, completely free in all respects from any control by this country, but united by a common allegiance to the Sovereign and by a community of ideas, receiving from their membership of the Commonwealth great advantages, but in no way suffering any restriction. The Title of this Bill expresses this fact that the independence which has been the goal for so long of many Indians can be, and I believe will be realised within the British Commonwealth of Nations. It is my hope that these two new Dominions may continue in this great association, giving and receiving benefits.

I saw with great regret in one paper, and I think in one paper only, that the action which we are now taking was described as abdication. It is not the abdication, but the fulfilment of Britain's mission in India. It is the culminating point in a long course of events. The Morley-Minto proposals, the Montagu-Chelmsford proposals, the Simon Commission Report, the Round Table conferences, the Act of 1935, the Declaration at the time of the Cripps Mission, the visit of my right hon. Friends to India last year, were all steps

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in the road that led up eventually to the proposals that I announced to the House on 3rd June last. This Bill is designed to implement those proposals, which met, I think, with general acceptance in this House and in the country.

I will now turn to the provisions of the Bill itself. The House is, I recognise, being asked to pass this Bill in a very short time. I have a great deal of sympathy with the hon. Member for Earnham (Mr. Nicholson) in the point he made. I agree that the time given is not commensurate with its great importance. But we are really constrained by the urgency of the matter. The House will realise that, once the decision had been come to by the Indians themselves that a separation of India into two Dominions was necessary, the position of the existing Government became one of ever-increasing difficulty. The eyes of all were fixed on the future. The day-to-day work of Government became subordinate to the consideration of that most complicated and difficult business of effecting the separation. In these conditions, the continuance for any long period of the Central Government in India, of a Government containing the leaders of two parties that wished to separate, was impossible. The position of the Governor-General became extremely difficult. As a consequence, the House will realise that it has been a rather arduous and exacting task to prepare this Bill in the time available. No doubt, if time allowed, it could be improved. Its general lines have, necessarily, had to be discussed by the Governor-General with the Indian leaders, and while I would not for a moment suggest that every detail has the approval of both the Congress and the Muslim leaders—that would be far too much to expect—I do believe that, in its present form, it represents the greatest measure of agreement possible, and I believe, too, that it will effect what is required. Delay, I am absolutely certain, would jeopardise success.

It would be very easy to show points where a deadlock might arise, because one can do that with almost every constitutional proposal, and much that is contained in it will have to be worked out by agreement, and much will depend on the personal influence of those concerned, and especially of the Governors-General themselves. I hope, therefore, that the House will excuse, on the ground of urgency, the short time given for its discussion of the Bill. It is simply due to the pressure of events, and not from any disrespect to this House, or any lack of appreciation of the magnitude of this measure

May I turn to the Clauses? In Clause I, provision is made for the setting up, from 15th August next, of two Dominions to be known as India and Pakistan. It is, of course, quite easy to suggest

alternative names. One could do that at any christening, but, in fact, these are the names by which the spokesmen of the Indian parties wish the Dominions to be called, and as, presumably, it will be in the power of the Dominions, once set up, to change their names, it does not seem worth while to endeavour to make any alterations in this Bill, or to spend much time on the point.

Clauses 2, 3 and 4 give effect to the methods which I described to the House last month, whereby the Indian people, through their own representatives, were given the opportunity of deciding on the division of territory. A decision has already been come to that Bengal and the Punjab should be divided, and in the North-West Frontier province and in Sylhet voting is taking place to decide the future of those areas. We must expect, therefore, that in a few days the broad division will have been made. But it will have been noted that, in accordance with what I indicated to the House, the detailed delimitation of boundaries will be done by two Commissions. These Commissions will be starting work forthwith. Hindus, Muslims, and, in the case of the Punjab, Sikhs, will be members. I am glad to say that Sir Cyril Radcliffe, K. C., has accepted the request made to him by all parties in the Government of India to be chairman of both Commissions.

Clause 5 of the Bill provides for the appointment by the King of a Governor-General for each of the new Dominions, with the proviso, however, that until provision is made to the contrary by either of the new Dominions, the same person may be Governor-General of both. This is a pretty clear Clause. Normally, it would be both unnecessary and inexpedient for a Minister here to say anything more about it. The House is, of course, aware that the appointment of a Governor-General in the Dominions is made by the King on the advice of his Ministers in the Dominion concerned, and it would be wholly improper for His Majesty's Government in the United Kingdom to be in any way concerned with the matter. But, today, it is necessary for me to make some further comments, because the position in relation to the appointment of Governors-General of the new Dominions is exceptional.

In the first place, there is the matter of procedure. It is not possible to follow the normal procedure in this case. Under the Bill, Governors-General will have to be appointed as from 15th August. Although the two countries become Dominions as from that date, there can be no Ministers formally to advise the Crown until a Governor-General has been appointed and Ministers have taken office. In these circumstances, it was agreed with the Indian leaders, and the King's approval was obtained, that the Viceroy

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should consult the recognised leaders of Congress and the Muslim League as to whom they would wish to recommend for appointment as Governors-General. Then their advice would be formally tendered to the King by His Majesty's Government in the United Kingdom. This procedure would of course, only apply in the present case. I wish to emphasise the fact that, although the appointments would be made on the formal advice of Ministers here, they are, in fact, the recommendations of the Indian leaders themselves.

So much for the exceptional procedure in the present instance. But the Viceroy has represented that it would be in the interest of all if some statement could be made at an early date about the persons who are to be recommended for these posts. This, again, is a most unusual procedure. I should inform the House that I have received the King's specific authority for referring to the recommendations before him to which assent cannot, of course, be given until the Bill has become law. It had been intimated to us that it would be most convenient to all concerned to have one Governor-General for both of these Dominions in the initial stages, and, for some time, we proceeded on this assumption. It has recently become clear, however, that the Muslim League was in favour of a separate Governor-General to be appointed for Pakistan.

It is obviously very desirable that this matter should be settled at the earliest possible opportunity in order that the position may be understood in India, and so that the new Governors-General can prepare themselves to take over on 15th August. Both Congress and the Muslim League, who have been recognised in the Bill as the successor authorities, have made recommendations which have been conveyed by His Majesty's Government to His Majesty. While formal announcement must await the passing of the Bill, His Majesty has intimated that he is prepared to accept these recommendations as soon as the Bill is passed. The recommendations are in favour of the present Viceroy as Governor-General of India, and of Mr. Jinnah as Governor-General of Pakistan.

I wish to add that the recommendation of Lord Mountbatten is also welcomed by the Muslim League. I am also informed that the Muslim League have agreed that he should be Chairman of the Joint Defence Council which will be responsible for the central administration of the Armed Forces until such time as India and Pakistan are themselves in a position to administer them. I am quite sure the House will agree with me that this recommendation shows that Lord Mountbatten has carried out his duties in India with complete impartiality, and has won the confidence of all the people of India. He has expressed his willingness, in the spe-

cial circumstances, to serve in this capacity, at all events during the transition period.

I wish here and now to pay my tribute to Lord Mountbatten. Great benefits to the future of the whole continent of India would have followed from his appointment as Governor-General of both the new Dominions. However, this is not to be. As constitutional Governor-General he will, of course, act on the advice of his Ministers in all matters. Nevertheless, he has built up a remarkable position for himself with both parties in India, and his wise counsel and his great devotion to the public cause without any thought of his own personal position will, undoubtedly, prove a most beneficial factor in the future development of the whole continent of India.

Turning to Clause 6, this deals with the powers of the legislatures of the new Dominions. The aim of the Clause is to put the new Dominions in the same position as that in existing Dominions; that is to say, that they should not be fettered by any of those limitations which are appropriate to Colonial legislatures. The position of Dominion legislatures is set out in Sections 2 to 6 of the Statute of Westminster. This clause, though different in actual form from those Sections—because, of course, the Statute of Westminster dealt with Parliaments actually in being, and those Parliaments were subject, theoretically, at the time to certain restrictions—has, in substance, I am advised, precisely the same effect.

Clause 7(b) deals with the Indian States. The House will remember that the Cabinet Mission, in their memorandum of 12th May, 1946, informed the States that His Majesty's Government could not, and will not, in any circumstances, transfer paramountcy to an Indian Government. With the transfer of power to two Indian Dominions, it is necessary to terminate the paramountcy and suzerainty of the Crown over the Indian States, and, with them, the political engagements concluded under paramountcy and the mutual rights and obligations of the Crown and the States which derive therefrom. The reason for this is that they all depended for their implementation, on our part, on the continuance of the responsibility of Great Britain for the Government of India; and with the transfer of power to two Dominion Governments it would be impossible for the British Government to carry out these obligations. An important element of those rights and obligations concerns the protection of the States against external aggression or internal subversive movement, and the methods whereby the Paramount Power has in the past influenced the policy of the States so



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as to enable it and them to fulfil such undertakings. A feature running through all our relations with the States has been that the Crown has conducted their foreign relations. They have received no international recognition independent of India as a whole.

With the ending of the treaties and agreements, the States regain their independence. But they are part of geographical India, and their rulers and peoples are imbued with a patriotism no less great than that of their fellow Indians in British India. It would, I think, be unfortunate if, owing to the formal severance of their paramountcy relations with the Crown, they were to become islands cut off from the rest of India. The termination of their existing relationship with the Crown need have no such consequence. In fact, already a large number of the States have declared their willingness to enter into relationships with the new Dominions, and some have been represented in the Constituent Assembly of India. It is the hope of His Majesty's Government that all States will, in due course, find their appropriate place within one or the other of the new Dominions within the British Commonwealth, but until the constitutions of the Dominions have been framed in such a way as to include the States as willing partners, there must necessarily be a less organic form of relationship between them, and there must be a period before a comprehensive system can be worked out.

But, quite apart from the political relationship between the States and British India, there have grown up through the years financial and economic relations—relations on such matters as posts and telegraphs, customs and communication—which it would be disastrous to terminate immediately. The proviso in Clause 7(1) is designed to secure the continuance of the existing arrangements in this field until there has been time for detailed negotiation between the parties. After the transfer of power, more detailed and binding arrangements will need to be concluded between the Dominions and the States Governments, and it may well be that these arrangements will, in their turn, be superseded by a more organic co-operation between the States and the Dominions. But these later arrangements will, of course, take time to work out, and the transition of the States from the lapse of paramountcy into a free association with the new Dominions is a process which will require proper discussion and deliberation.

We welcome the active steps being taken to set up States Departments of the new Dominions to handle negotiations with the States Governments. We trust that this will facilitate the negotiation of the arrangements to which I have referred. If I

were asked what would be the attitude of His Majesty's Government to any State which has decided to cut adrift from its neighbours and assert its independence, I would say to the ruler of that State, "Take your time and think again. I hope that no irrevocable decision to stay out will be taken prematurely."

Clause 7(1) (c) is related to Paragraph 17 of the Statement of 3rd June, which said:

"Agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority."

The effect of the Clause will be to leave it open to the Constituent Assemblies of the new Dominions to initiate negotiations for fresh agreements with the Jirgas, or tribal assemblies, who are the treaty-making bodies empowered to enter into agreements on behalf of the tribes. As the House is aware, these tribal areas are not part of British India. They are not administered by officers of the Government of India. Relations with them are governed by a series of treaties and agreements which confer jurisdiction in certain matters on the Crown. In practice, this jurisdiction is exercised by the local political authorities. The termination of these agreements will place the tribes and the appropriate successor Government in a position freely to negotiate fresh agreements.

Clause 7(2) deals with the omission from the Royal Style and Titles of the words "Indiæ Imperator" and the words "Emperor of India." I should explain to the House that a change in the Royal Style and Titles is not a matter for the United Kingdom alone. As the Preamble to the Statute of Westminster makes clear, it concerns the other members of the British Commonwealth as well. But, for practical reasons, it has not been possible for such parliamentary action, as may be necessary, to be taken in those other countries simultaneously with legislation here. The House will, however, be glad to learn that, as a result of consultation with the Prime Ministers concerned, I am authorised to state that the other Commonwealth Governments agree to the proposed change in the Royal Style and Titles, and are prepared to take such steps as they consider necessary to obtain the consent of their Parliaments. It may be, therefore, that some time will elapse before this sub-section can become operative.

I think, perhaps, it will be convenient if I state here what is the position with regard to the India Office. With the termination of all British control over the Indian sub-continent, the historic office of Secretary of State for India will come to an end. The conduct of relations with India will fall within the sphere of the Secretary of State for Commonwealth Relations. For a transi-

tional period there will, no doubt, be, in relation to India and Pakistan, a considerable volume of work, much of it of a winding-up character, which would not ordinarily fall within the range of the functions of the Secretary of State for Commonwealth Affairs. This will add considerably to his responsibilities, and in order to assist in this work, I am proposing to appoint a Minister of State for Commonwealth Relations. This will be one of the posts allowed under Section 2 of the Re-election of Ministers Act, 1919, as amended by the House of Commons Disqualification (Declaration of Law) Act, 1935, commonly called that of "Minister without Portfolio." There will, consequently, be no need for legislation, but I shall be submitting a recommendation to His Majesty the King for filling this post in due course.

In Clause 8 temporary provision is made for the exercise of powers of legislation by the Constituent Assemblies. The House will recall that the original plan of the Cabinet Mission was for the setting up of a constituent assembly for the purpose of framing a Constitution for all-India, which would then be brought before Parliament as expressing the desires of the people of India. However, that Cabinet plan was not carried out in full, but the Constituent Assembly, which the Muslim League decided not to attend, has been at work for some time upon the framing of a constitution, and it is proposed that a Constituent Assembly for Pakistan should be formed as soon as the procedure indicated in Clauses 2 to 4 has been carried out.

The decision to set up two Dominions instead of waiting for the formulation by a Constituent Assembly of a new Constitution has, of course, altered the whole situation. It has become necessary to provide for Legislatures in India and Pakistan as from 15th August; and these Legislatures, besides having general legislative powers, must have also constituent powers—that is to say, they must be legislative bodies set up for the dual purpose of performing the ordinary functions of a Parliament and of making Constitutions. The problem to be solved was to get a Parliament at work in the two Dominions where there were no Constitutions actually in being while, at the same time, providing for the framing of the new Constitution. Well, a solution has been found by adapting the India Act, 1935, with necessary adaptations, as the basic Constitution for the time being for both the new Dominions, while giving the Constituent Assemblies the status of Parliaments.

Of course, the House is well aware that the Act of 1935 provided for a Central Legislature and Provincial Legislatures and for the division of powers between them. It is an immensely long

and detailed Act, which, as some of us remember, took months of work in the framing, and in the preliminary consultations, and in passing through this House. It was designed for a united India. It now has to be adapted for the service of two Dominions. It contained many limitations on the powers of the Legislature, and gave, among other things, extensive powers to the Governor-General and to the Provincial Governors to act in their own discretion. The proviso in Clause 8 in effect sweeps away all these special powers and is intended to place the Governor-General and the Provincial Governors in the position of Dominion Governors-General—that is to say they act only on the advice of their Ministers.

Clause 3 protects the existing position as between the Centre and the Provinces until other provision is made by a law passed by the Legislature. It will be realised that the intention is that when the new Dominions begin to function there should be in existence a body of law which can be amended by the Constituent Assemblies and subsequently by any legislatures that may be formed to take their place.

I said that the Act of 1935 will be, in the first instance, until other action is taken, the basis of the new Constitution, with necessary adaptations. Clause 9 sets out the machinery of adaptation. This is to be done by order of the Governor-General. If hon. Members will refer to Clause 19, the definition Clause, they will see that up to the appointed day, 15th August, the powers are exercisable by the Governor-General within the meaning of the Act of 1935, that is to say, by Lord Mountbatten, but after that date, where the Order or Act affects only one Dominion, by the Governor-General of that Dominion; where it concerns both Dominions, by the two Governors-General acting jointly. I must admit that the powers given here are very wide. That is inevitable in the nature of the case. The Governor-General has to bring the Act into operation. He has to effect a division between the two Dominions, dividing the powers, rights, assets, property, liabilities, *et cetera*.

I should like to mention here that the Indian leaders have agreed in principle in the setting up of an arbitral tribunal to which should be referred any questions regarding the division of assets and liabilities on which the two Governments cannot reach agreement. The question of the composition of that tribunal is still under discussion. But, besides these duties, the Governor-General has to make the adaptations required in the Government of India Act, 1935, in order to make it the new constitution for

the time being. He has in particular the task of arranging, during the transition period, for the carrying out of services which are vital to the interests of both the new Dominions. The House will realise how great is the problem of dealing with such matters as railway and other communications, the reserve bank, the monetary and fiscal systems, and, of course, defence—to mention only the most obvious examples of those services which have hitherto been operated in the interests of the whole of India. Clearly, it must take time before the separate systems can be set up, and for definite agreements to be made between the two Dominions.

Provision must be made by some method—it may be by joint delegations from the two Dominions—for carrying out all these various activities during the transition period; and it is for this reason that such wide powers are given to the Governor-General. It would, of course, have simplified matters if the same person had held the position of Governor-General in both Dominions; but it has been decided otherwise. It is clear it can only be worked effectively by agreement between the two Governors-General. These powers of the Governors-General will come to an end on 31st March next, unless terminated earlier by the Dominion Legislatures. There is a similar though rather smaller problem involved in the division of the Punjab, Bengal, and possibly Assam. Accordingly, these powers are also given to the Governors of those Provinces, but only up to 15th August. I call attention to Sub-section (3). That gives retrospective effect as from 3rd June in order to cover actions by the Governor-General and the Governors taken in anticipation of legislation. The House will realise that much has to be done in preparation which is not strictly within the 1935 Act.

(ii)

Mr. R. A. Butler (Saffron Walden): Is it clear that, in view of the announcement made about the two Governors-General, no Amendment will be necessary to the Bill, in view of the interpretation Clause at the end, which provides for that?

The Prime Minister: I think no Amendment is needed. I think the interpretation Clause makes it quite clear.

Mr. Molson (The High Peak): I should like to ask one question for the purpose of elucidation. When the Governor-General makes an order under Clause 9, presumably he does not act on the advice of his Ministers, but acts, I take it, in the exercise of his individual judgment. If the Prime Minister looks at Sub-section (2), where similar powers are given to the Governors of Provinces

it is expressly stated that they are to exercise their individual judgment. I assume, therefore, that the Governor-General also will exercise independent judgment, and will not act on the advice of his Ministers.

The Prime Minister: No, the hon. Member is not correct. These powers are given to the Provincial Governors only up to 15th August, and, therefore, they act on their own individual judgment; but thereafter the Governors-General will be acting on the advice of their Ministers.

Clause 10(1) deals with the position of the Services. The House will recall that in the White Paper published last April His Majesty's Government made plain their position with regard to the services, and all pledges then given by His Majesty's Government in the United Kingdom stand. It was then stated that the Government of India accepted liability for pension earned by service under the Secretary of State, whether by civilians or by members of the Defence Services. Clause 10, which has been inserted at the express request of the leaders of the Indian parties, provides for maintenance of the existing conditions of service, as well as of compensatory rights, in the case of those members of the Secretary of State's Services who continue to serve the Governments of the new Dominions.

As regards persons who have been in Government Service, whether Central or Provincial, but whose service has not been specifically under the Secretary of State, I am happy to be able to announce now that the leaders of the Indian parties have guaranteed the existing terms and conditions of service to all their employees, including Europeans. This guarantee covers pensionary and provident fund liabilities, and excludes any question of discrimination between Indian and non-Indian. But it cannot, of course, be regarded as an abandonment of the general right of any Government to revise the salaries of their servants from time to time. It is, however, recognised that, among the liabilities to which I have referred above, there is one category for which His Majesty's Government have a special responsibility, namely towards Europeans who served in the Secretary of State's and analogous Services. We intend to invite the new authorities to negotiate, in due course, an agreement whereby a capital sum in sterling will be set aside to cover this liability. Meanwhile, those concerned have the assurance of His Majesty's Government that they will receive the pensions to which they are entitled.

The next three Clauses are rather technical. They deal with the Indian Armed Forces, the British Forces in India, and the Naval

## INDIAN INDEPENDENCE BILL

Forces. I think it would be convenient for any special points in that regard to be brought up perhaps during the Committee stage. There are, however, some important matters which I should like to explain. First, with regard to the partition of the Armed Forces. For the purpose of dealing with the question of partition there has been, since 7th June, a Partition Committee of the Interim Government, consisting of two representatives of each of the two parties, with the Viceroy as Chairman; and a number of expert committees have been set up to work under this Partition Committee.

This Committee's function was to examine the steps to be taken to set up machinery for carrying out the partition. It was really a fact-finding body, with the duty of making proposals and not of reaching final decisions. It was also decided that, as soon as any one Province had declared in favour of joining a new and separate Constituent Assembly, the Partition Committee should be replaced by a Partition Council. That Council should consist of two of the top-rank leaders of Congress and two of the Muslim League, with the Viceroy as chairman. This Council was set up on 27th June, and it was announced on 1st July that the Partition Council had reached agreement on the general principles to govern the reconstruction of the Armed Forces. The House will have seen that announcement, and a very important agreement was arrived at.

Until the division of the Forces is completed, and the two Dominion Governments are in a position to administer them, all existing Armed Forces in India will remain under the administrative control of the present Commander-in-Chief, who will, in turn, be under the Joint Defence Council, consisting of the Governor-General or Governors-General, the two Defence Ministers, and the Commander-in-Chief himself. There was a question about the two Governors-General; the original contemplation being one person holding both positions. It has been agreed that Lord Mountbatten should be chairman of this Council. The Commander-in-Chief will have no responsibility for law and order, no operational control of any units, except during transit from one Dominion to another, nor any power to move troops within the borders of either Dominion. With regard to the British Forces in India at the transfer of power on 15th August, the British Armed Forces will immediately start to be withdrawn from India. This withdrawal will be carried out as rapidly as shipping permits, and is expected to be completed by about the end of this year.

I think perhaps I can deal shortly with the remaining points of this Section. Clause 12(1) declares that the British Army, the British Air Force and the Royal Navy when in Indian waters are



under the direction and control of the United Kingdom Government and Service authorities. This, of course, is in consistence with the Dominion status of India and Pakistan. Clause 12(3) provides for the civil and military authorities continuing to offer the same facilities as heretofore for the British Army, pending their evacuation, and requires the Governor-General, by his orders, to facilitate their evacuation. I should say that the phrase "and in the other territories" refers to the tribal areas and the States, and is intended to ensure that the Indian civil and military authorities extend to the British Forces whatever facilities they may secure for their own Forces in such territories.

I will here refer to the Third Schedule, which sets out the modifications of the Army Act which have to be made for the British Army so long as it remains in India. The general principle of the modifications is to remove all powers of other civilian authorities in India with the internal affairs of the British Army in India, while preserving their powers and duties so far as they do not amount to interference of this kind. Clause 14 again is technical. It is essentially a transitional Clause dealing with the position of the Secretary of State and the Auditor of Indian Home Accounts. I will only note that under Sub-section (3) the advisers of the Secretary of State provided for under the 1935 Act will now cease to function. Clause 15 is, I think, self-explanatory. Clause 16 confirms the separation of Aden from India, which was effected by Section 288 of the Government of India Act, 1935. I do not think the position with regard to divorce or as to existing laws requires any detailed explanation.

Before I close, I should like to deal with certain other matters. First, in regard to the relations between this country and the new Dominions, as the House is aware, it has been our intention that there should be negotiated and concluded, simultaneously with the transfer of power, treaties or agreements covering matters arising out of the transfer of power in India. Owing to the course of events in India, it has not been possible for such agreements to be negotiated. It is only since the statement of His Majesty's Government of 3rd June that it has become clear that the transfer of power will be to two separate States. The areas to be included in those States are not yet completely delimited, and their Governments have not yet been constituted. It has, therefore, not been possible to negotiate agreements with the successor authorities, though it is our intention to begin such negotiations when the new Indian Governments are in the saddle. Apart from matters arising out of the transfer of power, there are other important matters on which we hope to have negotiations with the Indian and Pakistan Govern-

ments. We desire to establish, by free negotiation, close, cordial and effective arrangements with both new Dominions in all fields affecting our common interests, and particularly in regard to defence matters and in the economic field.

I have endeavoured to explain to the House the general purposes and provisions of this measure. There will, no doubt, be many points of detail which hon. Members will raise in the course of this Debate and at Committee stage. It will be the object of my right hon. Friends and myself to give the House the fullest information and explanation in our power, but there will inevitably be some matters on which it will not be possible to answer with precision, for this Bill is unlike other Bills dealing with India. It does not lay down, as in the 1935 Act, a new Constitution for India, providing for every detail. It is far more in the nature of an enabling Bill—a Bill to enable the representatives of India and Pakistan to frame their own Constitutions, and to provide for the exceedingly difficult period of transition. Ever since the Cripps' Mission, it has been the desire of successive Governments that the future constitution of India should be framed by Indians and not by the British. Had the Cripps offer been accepted, a Constituent Assembly might have come into being immediately after the end of the War. What has had to be done hurriedly, might have been done at greater leisure. We might have been spared some anxious years. But it is no good crying over lost opportunities.

The measure now before the House offers, I believe, the greatest measure of agreement possible of attainment, and it is, I think, the best service we can do for our Indian fellow-subjects to pass it into law. We must all regret the division of India, but despite this grave drawback, we should, I think, welcome this new chapter in the history of the Commonwealth and Empire. That Indian Dominions are to be set up and this House is relinquishing its control and responsibility for the Government of India is not, as a few would have us believe, a sign of weakness. It is, on the contrary, a sign of the strength and vitality of the British Commonwealth. There have been great Empires in the past in which many nations have been brought together in one polity, but they perished because their rigidity of structure did not allow of growth, and because the peoples which composed it were subjected to the will of one dominant ruler or one dominant race.

The British Commonwealth of Nations survives today, and has survived through the strain of two great wars, precisely because it is not static, but is constantly developing, and because it has throughout the years steadily changed from an Empire, in which the power

of control rested with Britain, to a partnership of free peoples inspired by common ideals and united in a common interest. We are now proposing to welcome two new Dominions into that full partnership. We shall, I am sure, all wish that they will long remain with us, and that the friendship which united so many British and Indians, despite all the strains of recent years, may continue and extend ever more widely. My hope is that we may forget past differences and remember only how often and in how many fields of human endeavour Britons and Indians have worked together in harmony.

### THIRD READING OF THE BILL

(iii)

(Sir Stafford Cripps):<sup>1</sup> I beg to move that the Bill be now read the third time.

In moving the Third Reading of this Bill, I am introducing what will be the last Debate in this House on Indian affairs. For over a century now this House has been concerned with the conduct of affairs in India and the records show how many distinguished Members of the House have taken part in those Debates. Although it may be with regret that we thus pass from a great subject-matter to which so many hon. Members have given of their best in thought and effort, it is with the most profound gratitude that we should welcome the privilege that has made us the vehicles of the fulfilment of British policy in India, for there is no doubt of the fact that, by passing this Bill, we shall be firmly and finally establishing our honesty of democratic purpose. There have been those who doubted whether we as a country would be prepared to carry out to their full and to their logical conclusion those professions of democracy which we have made in the past. This Bill is the proof of our sincerity of purpose.

We take this action, not because it is forced upon us by circumstances outside our control, but because it is consistent with all that we hold to be just and right. It is true, as many have remarked in the course of our discussions on the future of India, that we would far rather have passed a Bill setting up a single united government for India as a whole. That has not proved possible and it is not the sole fault of any of us, Indians or Englishmen, that it has not proved possible. It is the inevitable outcome of a

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1. Parliamentary Debates, July 15, 1947, House of Commons, Fifth series, Vol. 440, 1946-47; cols. 227-32.

long history of difficulties and of tensions, of lost opportunities and human failures, of which we have all had our share. None of us can point our finger at others and say, "But for you, all would have been well." I am perfectly conscious myself, in the small part I have played in these matters, that by greater wisdom and understanding at particular moments I might have made a better contribution to a united India, but it is of no profit now to review the past. This Bill will launch us into a new and, let us hope, a happier era.

I have always held and often stated that we should never achieve true and worthwhile co-operation with India until we could deal with one another upon the basis of absolute equality. It is that equality which this Bill will establish for the first time. It will thus create a basis for a far deeper and more significant friendship between the peoples of our two countries. Some have thought in the past that we could hold India in close association with ourselves on some basis of modified domination. That is not possible, and to believe it shows a profound misunderstanding of all that is inherent in the democratic principles which we have spread throughout the world from this country. I am convinced, therefore, that this Bill will do more to create a real and living friendship with India than any other action which this country has ever taken.

A great deal has been said in the course of the Debates on this Bill on the subject of the Muslim and Hindu communities and the difficulties resulting from their inability to co-operate, but let us not forget that there are other important elements in India besides these two communities. To name two, there are the Sikhs and the Pathans. In some ways the position is far more difficult for these two communities than for the two major communities. It is not practicable, short of the complete Balkanisation of India, which I think no one desires, to give to every individual community the complete and undiluted rights of self-government which the two major communities attain through this Bill. But that fact does nothing to diminish our care or anxiety that the Sikhs and the Pathans should receive the fullest measure of recognition for their racial and cultural differences. Both these peoples have shown restraint in their most difficult situation and we hope and believe that those to whom, by this Bill, we are now remitting power in Pakistan and India will do their utmost to admit the reasonable claims of these two splendid peoples who have contributed so much to the life of India.

I am glad, too, that the depressed classes in India, and other minorities such as the Indian Christians and Anglo-Indians, have

been given a very full representation in the Minorities Commission set up by the Constituent Assembly of India in accordance with the suggestion that was made by the Cabinet Mission, and also that all their representatives are now working closely with the majority parties to evolve a fair and full protection for them in the future Constitution. That and the action taken by the Constituent Assembly augured, I think, well for the future of their settling down together. No one who is conscious of the geographical, economic and social considerations which must condition the future of India and Pakistan can fail at this moment to express the hope that the peoples and Princes of the States will throw in their lot with the people of India or Pakistan to the very great benefit of all.

Changes brought about by this Bill must, of course, create problems for all parties, problems which are not easy to dispose of and which will need patient negotiation for their solution. I believe that it is most undesirable that we should attempt in any way to interfere in this matter or to force its solution in a particular direction. Whatever is done must be freely done, and must be acceptable to the peoples of the States as well as to those of India and Pakistan; but we would, at this moment of parting with our suzerainty in India, express the hope that the general good and future of the continent of India as a whole, under the leadership of the two new Commonwealth States, will outweigh any particular or local considerations.

It is important that the world should realise that this Bill has the support and backing of all the people of Great Britain of whatever party, that this is the solemn and considered act of the British people, and one which will give their country not less but more power to help in the wise conduct of world affairs. We do in this country believe most passionately in our democracy, not as some lightly held theory which we can adapt and modify to meet the exigencies of our own temporary interests in an ever-changing world, but as a basis and foundation for all our progress and development. It is upon that basis that the British Commonwealth of Nations has grown up, and it is because our sister States in the Commonwealth, to which we now welcome India and Pakistan, share with us that same deep belief in the democratic tradition, that we have found the possibility of closer union with them than with other countries in the world.

It is, indeed, a remarkable fact that there have now entered freely into this British Commonwealth two great States with the age-long tradition and culture of Asia, so different from those of Europe, upon which hitherto has been largely based the

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common citizenship of the British Commonwealth of Nations. This is a new development, and it will create conditions that will demand all our care and leadership in guiding the Commonwealth towards a prosperous and stable future. It is with deep emotion and humility that I am sure we must contemplate this vitally important task which falls to our lot. It has often been said that in the British Commonwealth of Nations we have a prototype of that free and friendly association that we seek amongst all the nations of the world. We have, by this Bill, added a new feature to that prototype. We have blended in a single association of closely linked and equal nations with a common loyalty, the age-long wisdom of the East and the modern experience and development of the West. We have started to build a bridge between two great world civilisations which have much to learn from one another and a great deal to contribute to one another. The success which we can show the world, in the years that lie ahead in this co-operation, may have a profound effect upon world history.

No praise can be too high for all those in India who have contributed to this final stage of the fulfilment of our policy. The leaders of the two great Indian communities, who have, amidst the most intense difficulties, come to agreement on the course to be pursued; our own representatives, pre-eminent amongst them the Viceroy, who have laboured unceasingly and unselfishly to achieve that agreement; the leaders of the other groups and communities, including those I have mentioned, who have been torn by the claims of their own people, but who, nevertheless, restrained their people from opposition; the Indian Christians and others who have uniformly given their support to a peaceful solution of the problem—all these have earned our gratitude. Every one of us must, however, realise the great difficulties that lie ahead, so great, indeed, that they well might cause lesser men than the Indian leaders of today to shrink from going forward into independence. In these coming days, we shall be ever ready and anxious to help them, through our experience, in any way that we can. It is not merely in name that they will become our sister nations within the British Commonwealth. That family association will place upon us a responsibility which we gladly and cheerfully accept, the responsibility to do our utmost to forward their independent progress and prosperity.

In giving this Bill what will, I am sure, be a unanimous Third Reading, we shall, I believe, blot out for ever the misunderstanding and difficulties that have from time to time in the past embarrassed our relations with the Indian people. India and Pakistan will take their places proudly in the comity of free and independent nations

of the world, strengthened, we believe, by the close ties of friendship with which they will be greeted as new members of the British Commonwealth of Nations; and it is, I am sure, the hope of all of us that this membership of our Commonwealth which they will share, will help them in the future to keep close to one another, and that the time will come when their present bitterness and opposition may be engulfed in the single purpose of the progress and prosperity of all the peoples of the Indian continent, whatever their race or creed. And, in that great forward journey upon which the two new members of the British Commonwealth of Nations will embark on 15th August next, which will become an historic day, we wish them "God speed" and assure them that we will ever be by their side in time of difficulty to extend a helping hand. Their leaders, who have struggled and suffered for the faith that was in them through long and hard years, we salute now as fellow-workers in the cause of world peace and progress. May the sun, which is now rising on their independence, never set upon their freedom and prosperity!

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THE INDIAN INDEPENDENCE ACT, 1947

An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

**1. The new Dominions.** (1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as 'the new Dominions', and the said fifteenth day of August is hereafter in this Act referred to as 'the appointed day'.

**2. Territories of the new Dominions.** (1) Subject to the provisions of sub-section (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in Bri-



tish India except the territories which, under sub-section (2) or this section, are to be the territories of Pakistan.

(2) Subject to the provisions of sub-sections (3) and (4) of this section, the territories of Pakistan shall be

- (a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted under the two following sections;
- (b) the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and
- (c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North-West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that

- (a) no area not forming part of the territories specified in sub-section (1) or, as the case may be, sub-section (2), of this section shall be included in either Dominions without the consent of that Dominion; and
- (b) no area which forms part of the territories specified in the said sub-section (1) or, as the case may be, the said sub-section (2) or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

(4) Without prejudice to the generality of the provisions of sub-section (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

**3. Bengal and Assam.** (1) As from the appointed day

- (a) the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist; and
- (b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.

(2) If, whether before or after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal then, as from that day, a part of the new Province of Assam shall, in accordance with the provisions of sub-section (3) of this section, form part of the new Province of East Bengal.

(3) The boundaries of the new Provinces aforesaid and, in the event mentioned in sub-section (2) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined,

- (a) The Bengal districts specified in the First Schedule to this Act, together with, in the event mentioned in sub-section (2) of this section, the Assam District of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal;
- (b) The remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal; and
- (c) in the event mentioned in sub-section(2) of this section, the District of Sylhet shall be excluded from the Province of Assam.

(4) In this section, the expression 'award' means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

#### 4. The Punjab. (1) As from the appointed day

(a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist; and

(b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.

(2) The boundaries of the said new Provinces shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

(a) the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of West Punjab; and

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab.

(3) In this section, the expression 'award' means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the Commission's proceedings.

**5. The Governor-General of the new Dominions.** For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty for the purposes of the government of the Dominion:

Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.

**6. Legislation for the new Dominions.** (1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation.

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty's or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His

Majesty's pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions.

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of that Dominion.

(5) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.

(6) The power referred to in sub-section (1) of this section extends to the making of laws limiting for the future the powers of the Legislature of the Dominion.

**7. Consequences of the setting up of the new Dominions. (1)**  
As from the appointed day

- (a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;
- (b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and
- (c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise;

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this sub-section, effect shall, as nearly as may be,

continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words 'Indiæ Imperator' and the words 'Emperor of India' and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

**8. Temporary provision as to government of each of the new Dominions.** (1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly:

Provided that:

- (a) the said provisions shall apply separately in relation to each of the new Dominions and nothing in this sub-section shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions;
- (b) nothing in this sub-section shall be construed as continuing in force on or after the appointed day any form of control by His Majesty's Government in the United Kingdom over the affairs of the New Dominions or of any Province or other part thereof;

- (c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgement as respects any matter shall cease to have effect as from the appointed day;
- (d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure, and no Provincial Act shall be disallowed by His Majesty thereunder; and
- (e) the powers of the Federal Legislature or Indian Legislature under that Act, as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of that Dominion in addition to the powers exercisable by that Assembly under sub-section (1) of this section.

(3) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by sub-section (2) of this section and the orders therein referred to, operates to limit the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provision of sub-section (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature.

**9. Orders for bringing this Act into force.** (1) The Governor-General shall by order make such provision as appears to him to be necessary or expedient—

- (a) for bringing the provisions of this Act into effective operation;
- (b) for dividing between the new Dominions, and between the new Provinces to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General in Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist;
- (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders in Council, rules and other instruments made thereunder, in their application to the separate new Dominions;
- (d) for removing difficulties arising in connection with the transition to the provisions of this Act;

- (e) for authorising the carrying on of the business of the Governor-General in Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935;
- (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day;
- (g) for authorising the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent;
- (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India; and
- (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any legislature, court or other authority in the new Dominions and creating new legislatures, courts or other authorities therein.

(2) The powers conferred by this section on the Governor-General shall, in relation to their respective Provinces, be exercisable also by the Governors of the Provinces which, under this Act, are to cease to exist; and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgment.

(3) This section shall be deemed to have had effect as from the third day of June, nineteen hundred and forty-seven, and any order of the Governor-General or any Governor made on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date not earlier than the said third day of June:

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof.

(4) Any orders made under this section, whether before or after the appointed day, shall have effect—

- (a) up to the appointed day, in British India;
- (b) on and after the appointed day, in the new Dominion or Dominions concerned; and



- (c) outside British India, or, as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law of the Legislature of the Dominion or Dominions concerned, would have on or after the appointed day, but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion.

(5) No order shall be made under this section, by the Governor of any Province, after the appointed day, or, by the Governor-General, after the thirty-first day of March, nineteen hundred and forty-eight, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion.

(6) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if, under this Act, the Province of Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province.

**10. Secretary of State's services etc.** (1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act, relating to the reservation of Posts.

(2) Every person who

- (a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof, or
- (b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions,

shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as re-

spects disciplinary matters, or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section two hundred and seventy-three of the Government of India Act, 1935, to be governed otherwise than by Orders-in-Council made (whether before or after the passing of this Act or the appointed day) by His Majesty-in-Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order-in-Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

**11. Indian Armed Forces.** (1) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions and for the command and governance of those forces until the division is completed.

(2) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is attached to or serving with any of His Majesty's Indian forces—

- (a) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his rank and functions; but
- (b) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

**12. British Forces in India.** (1) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United Kingdom, or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may, on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which, before the appointed day, were included in India, not being Indian forces.

(2) In its application in relation to His Majesty's military forces, other than Indian forces, the Army Act shall have effect on or after the appointed day

- (a) as if His Majesty's Indian forces were not included in the expressions 'the forces', 'His Majesty's forces' and 'the regular forces'; and
- (b) subject to the further modifications specified in Parts I and II of the Third Schedule to this Act.

(3) Subject to the provisions of sub-section (2) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions, shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces, not being Indian forces, the same functions as were, before the appointed day, performed by them, or by the authorities corresponding to them, whether by virtue of the Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces.

\* \* \* \* \*

**18. Provision as to Existing Laws etc.** (1) In so far as any Act of Parliament, Order in Council, order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require:

Provided that nothing in this sub-section shall be construed as continuing in operation any provisions in so far as the continuance thereof as adapted by this sub-section is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provisions of sub-section (1) of this section and to any other express provision of this Act, the Orders in Council made under sub-section (5) of section three hundred and eleven of the Government of India Act, 1935 for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions.

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

#### 19. Interpretation, etc.

\* \* \* \* \*

(3) References in this Act to the Constituent Assembly of a Dominion shall be construed as references

- (a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified
  - (i) by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan; and
  - (ii) should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province; and
- (iii) by the inclusion of members representing West Bengal and East Punjab; and
- (iv) should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members heretofore representing the Province of Assam, and the inclusion of members chosen to represent the remainder of that Province;
- (b) in relation to Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan:

Provided that nothing in this sub-section shall be construed as affecting the extent to which representatives of the Indian States take part in either of the said Assemblies, or as preventing the filling of casual vacancies in the said Assemblies, or as preventing the participation, in either of the said Assemblies in accordance with such arrangements as may be made in that behalf, of representatives of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend, and be deemed always to have extended, to the making of provision for the matters specified in this proviso.

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20. This Act may be cited as the Indian Independence Act, 1947.

#### First Schedule

Bengal districts provisionally included in the new province of East Bengal.

In the Chittagong Division, the districts, of Chittagong, Noakhali and Tippera.

In the Dacca Division, the districts of Bakarganj, Dacca, Faridpur and Mymensingh.

In the Presidency Division, the districts of Jessore, Murshidabad and Nadia.

In the Rajshahi Division, the districts of Bogra, Dinajpur, Malda, Pabna, Rajshahi and Rangpur.

#### Second Schedule

Districts provisionally included in the new province of West Punjab.

In the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhupura and Sialkot.

In the Rawalpindi Division, the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur.

In the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh.

## PART SEVEN

41

### RECOMMENDATIONS OF THE COMMITTEE ON THE PRINCIPLES OF UNION CONSTITUTION, 4TH JULY 1947

No. CA/63/Cons./47  
Constituent Assembly of India

Council House,  
New Delhi, the 4th July, 1947.

From

Pandit Jawaharlal Nehru,  
Chairman, Union Constitution Committee.<sup>1</sup>

To,

The President,  
Constituent Assembly of India.

Sir,

On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,  
Jawaharlal Nehru,  
Chairman.

*Confidential*

Constituent Assembly of India

#### MEMORANDUM ON THE INDIAN CONSTITUTION

Preamble.—We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

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1. The papers relating to this report will be published in Volume III, Part 2.

# INDIAN CONSTITUTIONAL DOCUMENTS

## Part I

### FEDERAL TERRITORY AND JURISDICTION

#### 1. Name and Territory of Federation

The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided by or under this Constitution or any treaty or agreement, the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

(*Note.*—The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.)

“India” has been suggested for the name of the State as being the shortest and the most comprehensive.

The words “save as otherwise provided by or under any treaty or agreement” are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

#### 2. Admission of New Territory

The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

(*Cf.*—Art. IV, Section 3(1), of the Constitution of the U.S.A. and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as “Parliament”; Unit Legislatures are referred to as “Legislatures”. The Federal Parliament consists of the President and a National Assembly comprising two Houses.)

#### 3. Creation of new units and alteration of boundaries of units

The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby.

- (a) create a new unit;
- (b) increase the area of any unit;
- (c) diminish the area of any unit;



RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

(d) alter the boundaries of any unit;  
and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

(Note.—This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a Province.)

Schedule I

*Territories Subject To The Jurisdiction Of The Federation*

**I. Governors' Provinces**

Madras,  
Bombay,  
West Bengal,  
The United Provinces,  
Bihar,  
East Punjab,  
The Central Provinces and Berar,  
Assam,  
Orissa.

**II. Chief Commissioners' Provinces**

Delhi,  
Ajmer-Merwara,  
Coorg,  
The Andaman and Nicobar Islands,  
Panth Piploda.

**III. Indian States**

(Here enumerate the acceding or ratifying Indian States:—

- (1) *Single States.*
- (2) *Groups of States.*)

(The Governors' Provinces and the Chief Commissioners' Provinces specified in the Schedule will be automatically within the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accession" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

## INDIAN CONSTITUTIONAL DOCUMENTS

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.)

### \*Part II

\*This Part is subject to the decision of the *ad hoc* Committee on Citizenship Clause.

#### CITIZENSHIP

1. *Citizenship*.—At the date of commencement of this Constitution:—

every person domiciled in the territories subject to the jurisdiction of the Federation—

- (a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or
- (b) who, or whose parents, or either of whose parents, was or were born in India, shall be a citizen of the Federation:

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

*Explanation:—*

For the purposes of this clause—

“Domicile” has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution—

- (a) every person who is born in the territories subject to the jurisdiction of the Federation;
- (b) every person who is naturalised in accordance with Federal law; and
- (c) every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation;

shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of Federal citizenship may be made by the Federal law.

*Explanation:—*

In this Constitution, unless the context otherwise requires, “Federal law” includes any existing Indian law as in force within the territories subject to the jurisdiction of the Federation.

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

*Note.*—The provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. Cf. Art 3 of the Constitution of the Irish Free State, 1922, which runs—

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship:

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred, and the conditions governing the future acquisition and termination of citizenship in the Irish Free State shall be determined by law.”

Clause I is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with S. 3(1)(c) of the Indian Naturalisation Act. VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and domiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a “domicile of origin”, which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country in which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile: provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her

husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi, before the coming into operation of this Constitution, he can do so either by taking up his fixed habitation in Delhi or by following the procedure prescribed in the above provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation".

Clauses 2 and 3 follow the provisions suggested by the *ad hoc* Committee: clause 2 is not necessary, if we are content to leave the matter to Federal law under clause 3. In this connection, there is much to be said in favour of the view of the *Calcutta Weekly Notes*:

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion, therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (*Calcutta Weekly Notes*, Vol. LI, No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI. Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under clause 3.

**Part III**

**FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE  
PRINCIPLES OF STATE POLICY**

1. *Fundamental Rights.*—(Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly.)

**Part IV**

**CHAPTER I**

**THE FEDERAL EXECUTIVE**

1. *Head of the Federation.*—(1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament.

(*Note.*—The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may, happen to have relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population; and where the Legislature is such that the legislator repre-

sents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale.)

2. *Terms of Office of President.*—(1) The President shall hold office for 5 years:

Provided that—

- (a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;
- (b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible for re-election once, but only once.

(Note.—Sub-clauses (1) (b) and (2) follow Art. 12(10) of the Irish Constitution; sub-clause (3) is also taken from the Irish Constitution.)

3. *Age qualification.*—Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.

(Note.—This follows Art. II, Section 1(5), of the Constitution of the U.S.A. and Article 12(4) of the Irish Constitution.)

4. *Conditions of President's Office.*—(1) The President shall not be a member of either House of the Federal Parliament and if

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

(Note.—These follow the provisions of Articles 12(6) and (11) of the Irish Constitution.)

5. *Casual vacancies and procedure at elections.*—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:—

Provided that:—

- (a) an election to fill a casual vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and
- (b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

6. *Vice-President.*—(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of State.

(3) The Vice-President shall hold office for 5 years.

7. *Functions of the President.*—(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision—



- (a) the supreme command of the defence forces of the Federation shall be vested in the President;
- (b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, *but such power of commutation or remission may also be conferred by law on other authorities.*

(Note.—The italicised words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.)

8. *Extent of executive authority of the Federation.*—Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or agreement, and shall be exercised either through its own agency or through the Units.

9. The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided, by the appropriate Federal authority.

[Note.—Like the corresponding provision in section 8(2) of the Act of 1935, this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law). Such a clause is necessary, for, otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution].

10. *Council of Ministers.*—There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.

11. *Advocate-General for the Federation.*—The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him.

12. *Conduct of business of the Federal Government.*—All

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

executive action of the Federal Government shall be expressed to be taken in the name of the President.

### CHAPTER II

#### THE FEDERAL PARLIAMENT

13. *Constitution of the Federal Parliament.*—The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the people.

14. (1) (a) The Council of States shall consist of—

- (i) not more than 10 members nominated by the President in consultation with universities and scientific bodies;
- (ii) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions plus 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of

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Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency.

(Note.—Taking into account only the “willing” Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. The composition of the Lower House will be on a purely population basis).

PROVINCES									
Madras ... ..	...	...	...	...	...	...	...	...	20
Bombay ... ..	...	...	...	...	...	...	...	...	12
Bengal (W) ... ..	...	...	...	...	...	...	...	...	12
U. P. ... ..	...	...	...	...	...	...	...	...	20
Punjab (E) ... ..	...	...	...	...	...	...	...	...	9
Bihar ... ..	...	...	...	...	...	...	...	...	20
C.P. ... ..	...	...	...	...	...	...	...	...	10
Assam ... ..	...	...	...	...	...	...	...	...	7
Orissa ... ..	...	...	...	...	...	...	...	...	6
Total									116
STATES									
Hyderabad ... ..	...	...	...	...	...	...	...	...	10
Mysore ... ..	...	...	...	...	...	...	...	...	6
Travancore ... ..	...	...	...	...	...	...	...	...	5
Baroda ... ..	...	...	...	...	...	...	...	...	3
Gwalior ... ..	...	...	...	...	...	...	...	...	4
Jaipur ..... ..	...	...	...	...	...	...	...	...	3
Kashmir ... ..	...	...	...	...	...	...	...	...	4
Jodhpur ... ..	...	...	...	...	...	...	...	...	2
Udaipur ... ..	...	...	...	...	...	...	...	...	2
Patiala ... ..	...	...	...	...	...	...	...	...	2
Rewa ... ..	...	...	...	...	...	...	...	...	2
Cochin ... ..	...	...	...	...	...	...	...	...	1
Bikaner ... ..	...	...	...	...	...	...	...	...	1
Kolhapur ... ..	...	...	...	...	...	...	...	...	1
Indore ... ..	...	...	...	...	...	...	...	...	1
									47
For the groups of the remaining States whose population individually does not amount to one million ... ..									
Total									24
									71

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

15. There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

16. *Language*.—In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the case may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

(*Note*.—This follows the corresponding provision in the Constituent Assembly Rules).

### CHAPTER III

#### LEGISLATIVE POWERS OF THE PRESIDENT

17. *Power of President to promulgate ordinances during recess of Parliament*.—(1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the

reassembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions, and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

(*Note.*—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible to Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision).

## CHAPTER IV

### THE FEDERAL JUDICATURE

18. *Supreme Court.*—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose.

(*Note.*—The *ad hoc* Committee\* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as *puisne* judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative, the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is

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\*For Committee's Report see Appendix.

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee).

### CHAPTER V

#### AUDITOR-GENERAL OF THE FEDERATION

19. *Auditor-General.*—There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

20. *Functions of Auditor-General.*—The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

### CHAPTER VI

#### SERVICES

21. *Public Service Commission.*—There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers.

22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.

### CHAPTER VII

#### ELECTIONS

23. *Elections to the Federal Parliament.*—Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.

24. *Superintendence, direction and control of elections.*—The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a commission to be appointed by the President.

**Part V**

*DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE  
FEDERATION AND THE UNITS*

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that—

- (1) the Constitution should be a Federal structure with a strong Centre;
- (2) there should be three exhaustive legislative lists. *viz.*, Federal, Provincial and Concurrent, with residuary powers to the Centre:
- (3) the States should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

**Part VI**

*ADMINISTRATIVE RELATIONS BETWEEN THE  
FEDERATION AND THE UNITS*

1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.

2. (1) It will be the duty of the Government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit: and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(2) The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.

(Note.—Cf. Sections 122, 124 and 126 of the Government of India Act, 1935.)



# RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

## Part VII

### FINANCE AND BORROWING POWERS

1. Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues, but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2. Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz.*, customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3. The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.

4. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law.

5. The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

(*Note.*—Cf. Sections 136 to 140, 162 and 163(2) of the Government of India Act, 1935).

## Part VIII

### DIRECTLY ADMINISTERED AREAS

1. The Chief Commissioners' Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

(*Note.*—The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.)

## INDIAN CONSTITUTIONAL DOCUMENTS

### Part IX

#### MISCELLANEOUS

The provisions for the protection of minorities as mentioned by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

### Part X

#### AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than one-half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

*Explanation.*—"Unit" in this clause has the same meaning as in clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

### Part XI

#### TRANSITIONAL PROVISIONS

1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.

(If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, inasmuch as there may be a division of assets and liabilities.)

2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or repealed, or amended by a competent legislature or other competent authority.

(2) The President may by Order provide that as from a specified date any law in force in the Provinces shall, until repealed or

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

3. Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.

4. Excepting holders of the offices specified in Schedule every person who, immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

(*Note.*—Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule. The proposed provision applies to persons holding offices other than those mentioned in the Schedule. Cf. Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below:—

“Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free State (Saorstát Éireann), and shall hold office by a tenure corresponding to his previous tenure.”)

5. (1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

*Explanation.*—For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

(Note.—It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.)

6. As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines:—

The Federal Parliament may, notwithstanding anything contained in Part X, by Act—

- (a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and modifications as may be so specified;
- (b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No act shall be made under this clause after the expiration of three years from the commencement of this Constitution.

(Note.—The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act, 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.)

## APPENDIX I

### CONSTITUENT ASSEMBLY

#### *Ad hoc Committee on Supreme Court*

We, the undersigned, members of the Committee appointed to consider the constitution and powers of the Supreme Court have the honour to submit this our report.

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

2. We consider the question under the following heads:

- I. Jurisdiction and powers of the Supreme Court.
- II. Advisory jurisdiction of the Court.
- III. Ancillary powers of the Court.
- IV. Constitution and strength of the Court.
- V. Qualifications and mode of appointment of judges.
- VI. Tenure of office and conditions of service of judges.

1. Jurisdiction and powers of the Supreme Court

3. A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4. A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new Indian Constitution:—

(a) *Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another.*

5. The Supreme Court is the best available forum for the adjudication of such disputes, and its jurisdiction should be exclusive.

(b) *Jurisdiction with respect to matters arising out of treaties made by the Union.*

6. The treaty-making power belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to invest the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) *Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe.*

7. If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.

- (d) *Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution.*

8. Clause 22 of the draft of the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

- (e) *General appellate jurisdiction similar to that now exercised by the Privy Council.*

9. Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two classes of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely,

- (1) cases involving the interpretation of a law of the Union, and
- (2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference to the particular issue to the Supreme Court. Cases involving the constitutional validity of the law of the Union or any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

10. It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein.

## II. Advisory jurisdiction of the Court

11. There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the

## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

Supreme Court an obligation to advise the Head of the State on difficult questions of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pro and con we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

### III. Ancillary powers of the Court

12. Power should be conferred upon the Supreme Court as under section 214 of the Act of 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by Section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

### IV. Constitution and strength of the Court

13. We think that the Supreme Court will require at least two Division Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

### V. Qualifications and mode of appointment of judges

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as re-

gards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. One method is that the President should in consultation with the Chief Justice of the Supreme Court (so far as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice, except, of course, that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent and command confidence the panel should not be an *ad hoc* body but must be one appointed for a term of years.

#### VI. Tenure of office and conditions of service of judges

15. The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some *ad hoc* judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:—

“30, *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a



## RECOMMENDATIONS OF THE UNION CONSTITUTION COMMITTEE

judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary, of a judge of the Exchequer Court, or, should the judges of the said court be absent from Ottawa or for any reason unable to sit, of a judge of provincial superior court to be designated in writing by the Chief Justice or in his absence by any acting Chief Justice or the Senior puisne judge of such provincial court upon such request being made to him in writing.

4. *Duties.*—It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance shall be required, and while so attending, he shall possess the powers and privileges and shall discharge the duties of a puisne judge of the Supreme Court.”

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court, *e.g.*, for the enforcement of fundamental rights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of *mandamus*, prohibition and *certiorari* have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of Court prescribing the procedure in cases where such orders are sought. [See section 7—10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938.]

17. We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

S. Vardachariar  
A. Krishnaswami Ayyar  
B. L. Mitter  
K. M. Munshi  
B. N. Rau

New Delhi:  
May 21, 1947.

MR. K. M. MUNSHI'S MOTION ON ORDER OF BUSINESS  
COMMITTEE, 14TH JULY 1947

Mr. President: The next item on the Agenda is the motion to be moved by Mr. Munshi.

Mr. K. M. Munshi (*Bombay: General*): Sir, I beg to move the following resolution:

“Resolved that the Constituent Assembly do proceed to take into consideration the further Report of the Order of Business Committee appointed by the Resolution of the Assembly of the 25th January, 1947.”

I have great pleasure, Sir, in moving this Report of the Order of Business Committee. As the House will see, this Report is quite different from the one submitted to the last sittings of the Assembly. Many and momentous have been the changes that have occurred in this country since the last sittings, and this Report has become necessary as a result of these changes. Some parts of the country have seceded from India and from the jurisdiction of this Constituent Assembly. By the end of this week, the British Parliament would have adopted legislation which would set India free by the 15th of August, 1947—an event for which we have been waiting for centuries; and lastly, the fetters that were imposed upon this Constituent Assembly by the Plan of May 16 have fallen. These changes, therefore require that the programme of this Constituent Assembly should be reorientated in the new atmosphere to meet the new situation which has arisen.

Sir, I may take the liberty of pointing out that the May 16 Plan has now gone for all practical purposes and that we as a sovereign body are moving towards reconstructing the constitution of the future in an atmosphere of complete freedom. I will take the liberty of mentioning in greater detail the change which has been referred to in a paragraph of the Report. The Plan of May 16 had one motive, to maintain the unity of the country at all cost. A strong Central Government was sacrificed by the May 16 plan at the altar of preserving the unity which many of us, after close examination of the Plan, found to be an attenuated unity which would not have lasted longer than the making of it. There were two stages envisaged in the Plan of May 16. These stages were the preliminary stage and the Union Constituent Assembly stage. A number of committees, which the House was pleased to set up, struggled to get some kind

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1. C.A.D. 14 July, 1947, Vol. IV, pp. 545-556.

of strong Government of India, a Government worth the name, out of these difficulties, but the struggle, I am free to confess, was not very successful. As a matter of fact, very often, if I may express my own sentiment, while examining the Plan of May 16 over and over again the Plan looked to me more like the parricide's bag which was invented by ancient Roman law. As you know, under the ancient criminal law of Rome, when a man committed a very heinous crime he was tied up in a bag with a monkey, a snake and a cock, and the bag was thrown into the Tiber till it sank.

The more we saw the Plan the more we found the minority struggling to get loose, the sections gnawing at the vitals and we had the double majority clause poisoning the very existence. Whatever other Members may feel, I feel—thank God—that we have got out of this bag at last. We have no sections and groups to go into, no elaborate procedure as was envisaged by it, no double majority clause, no more provinces with residuary powers, no opting out, no revision after ten years and no longer only four categories of powers for the centre. We therefore feel free to form a federation of our choice, a federation with a centre as strong as we can make it subject of course to this that the Indian States have to be associated in this great task on a footing of the four categories of powers and such further powers as they choose by agreement to cede to the centre. Therefore, Sir, I personally am not at all sorry that this change has taken place.

We have now a homogeneous country, though our frontiers have shrunk,—let us hope only for the moment—and we can now look forward to going on unhesitatingly towards our cherished goal of strength and independence. And therefore the report that was submitted to the House had to be revised.

Members will be pleased to see that the bulk of the work is already done. The Provincial Constitution Committee's Report on the main structure of the constitution has been circulated to the Members of the House and it will be taken up in a day or two in due course. Then the Union Constitution Committee has already prepared a White Paper—if I may say so—on the structure of the Union Constitution and that will also be placed before the House at this sitting.

I may remind the House that the report of the Union Powers Committee was placed before the House last session. It contained the details of the powers which were implied in the four categories which were mentioned in the May 16 Plan. In view of the change, these powers had to be re-examined, and a supplementary report of the Union Powers Committee will also be placed before the House for consideration. In the report it is suggested that, when

these principles have been accepted by the House, they will be forwarded to a drafting committee appointed for the purpose, which will perform the task of framing the necessary Bills for a Constitution of the Union of India.

With regard to paragraph 3 of the Report, as the House knows, several proposals for new fundamental rights have been referred back to the Advisory Committee. The Minorities Committee has still to examine several points, particularly the principles to be adopted in relation to minorities. Further, the Tribal Special Committees are at work; some of them have not completed their work and I do not know whether the work of some of them will be carried on at all. All these matters have yet to be decided by the Advisory Committee. They will go before the Advisory Committee and the report will come.

In the last sentence of paragraph 3 it is suggested that the Advisory Committee should complete its task in August and the recommendations may go straight to the Drafting Committee which will draw up the necessary provisions of the Act and then they will come before this House at a later session in the form of certain provisions of the Bill. But Mr. Santhanam has moved an amendment to this Resolution of mine, which I find is favoured by a considerable section of the House. The view, which, I understand, is taken by fairly large numbers in this House, is that so far as the principles to be adopted in the constitution in relation to minorities are concerned, they should not be sent to the Drafting Committee straight-way but that they must be placed before this House at this session; and after the principles are settled they should go before the Drafting Committee for being shaped into appropriate provisions. If that is the view of the House the Resolution of Mr. Santhanam will be accepted qualifying the last sentence in paragraph 3.

Paragraph 4 of the Report suggests that the Assembly should complete its work by the end of October of this year. It is highly necessary, Sir, as you were pleased to point out, that the work of Constitution making should be completed at the earliest possible moment and that if possible by November we should complete our Constitution making work. At one time the rules were framed on the footing that we may take longer. They dealt with the question of sections and groups and various other things. At the time the rule was framed—old Rule 63—it was intended that after the general lines of the Constitution were approved by this House they should be circulated to the members of the legislature. It is not necessary to indulge in that elaborate procedure, first because the office of the Constituent Assembly has circularised a set of question-

naires to which replies have been given by members of the several Legislatures in this Country and the opinions are therefore before the Committees. Secondly, things are moving so fast that we cannot go on at the pace at which we intended to go before. By the 15th August India will be a free and independent Dominion. We want to attain that stage as early as possible and to secure a constitution of our own which will give us the necessary strength. We must not forget the fact that in the Dominion Constitution which comes into existence on the 15th August the States' representatives have no place. We want that the Constitution of the Union therefore must come into existence at the earliest possible time. If that is so we shall have to eliminate this unnecessary procedure of circulating the decisions to the members of this House. This House is sufficiently representative of all interests and there is no reason why we should unnecessarily lengthen out the proceedings. Further, we know that this House is working under high pressure and within a limited time. For that purpose Members will find that in the Report of the Union Constitution Committee a provision has been made to this effect that within the first period of three years the constitution could be amended easily. In framing a Constitution as we are doing under great pressure, there are likely to be left several defects; and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions, in the first three years. Therefore, the point that is placed before the House by the Report is that on the one side the Advisory Committee will continue to complete its task, on the other hand the Drafting Committee will take up the Constitution Bill and by the middle or the end of October next will be ready with the Bill for being placed before the House. It is of great importance that this Constitution should be framed as early as we possibly can do it.

One other point. We have today with us the representatives of the Muslim League. I have no doubt that they are here as loyal and law-abiding citizens of India and that they will co-operate with us wholly in framing as speedily as we can a Constitution for the Union in which we hope they will get an honoured place as a minority. Secondly, I may refer to the representatives of the States who have come here and I will make only one appeal to them. The time is very short. The report envisages the formation of the Union by the end of October or at least by the end of November. The House naturally expects the co-operation of Members and the representatives from the States as partners in this urgent work of framing a Constitution.

As regards the manner of the States coming into the Union, I am sure whatever doubts they felt in the beginning must have

been dispelled by the way the Assembly has been working and by the statement issued a few days ago by the Honourable Sardar Vallabhbhai Patel which gives the fullest assurance to the States.

As far as the Members of the Constituent Assembly are concerned, they want the States to come in. On the basis of the May 16 Plan, I am sure the representatives from the States will be equally glad to come to an early decision.

I only want to say one thing. Time is of the essence of our activities here. We have to face the world with the determined purpose of framing a Constitution for a strong India which will be great and powerful. The world, I am afraid, is moving towards another crisis, and when that crisis comes—may it never come—it should not find us unprepared.

With these few words, I place this Report before the House for its consideration.

I have no objection whatever to accepting the amendment which Mr. K. Santhanam is proposing to move.

Shri K. Santhanam (*Madras: General*): Sir, I beg to move: "Add the following at the end of the motion:

'Resolved further that with the exception of para 3, the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the Constitution in relation to minorities for consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para 3 may be followed'."

I need not say much about the need for this amendment. We all know how our minds are greatly exercised about the principles to be followed regarding the safeguarding of the rights of minorities. If they are incorporated in the Draft Constitution, we shall find ourselves greatly handicapped in changing them. There will be a great deal of heart-burning if any important changes are sought to be made after the Draft is published, circulated and even commented upon in the press and on the platform. Therefore, it is essential that, like the other principles of the Constitution, the principles regarding electorates, franchise and similar matters should first be approved and then only they should be put in the Draft.

## ELECTION OF VICE-PRESIDENTS AND MEMBERS OF COMMITTEES

Mr. President: I accept that motion. I think the House does not want any further discussion.

I put Mr. Santhanam's amendment to the House.

The amendment was adopted.

Mr. President: The motion, as amended, is put to the House.

The motion, as amended, was adopted.

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## ELECTION OF VICE-PRESIDENTS AND MEMBERS OF COMMITTEES, JULY 16, 1947

Mr. President: I have pleasure in announcing that Dr. H. C. Mukerjee and Sir V. T. Krishnamachari are the only candidates who have been duly proposed and seconded for the office of Vice-Presidents and I accordingly declare them as duly elected Vice-Presidents of this Assembly.

As the House is aware, it was decided to elect members to certain other Committees and I have to announce the results in regard to those elections also.

The following members have been duly nominated to the various Committees in accordance with the resolutions of this House of the 14th July 1947:

### 1. *Credentials Committee:*

Bakshi Sir Tek Chand.  
B. Pocker Sahib Bahadur.  
Sri Ram Sahai.

### 2. *House Committee:*

Ch. Mohd. Hassan.  
Sri Upendra Nath Barman.  
Sri Jainarain Vyas.

### 3. *Steering Committee:*

Haji Sayyid Mohd. Saadullah.  
Mr. Abdul Kadar Mohammad Shaikh.  
Sri Surendra Mohan Ghose.  
Sri Jagat Narayan Lal.

Acharya J. B. Kripalani.  
Gyani Gurmukh Singh Musafir.  
Sri Chengalaraya Reddy.  
Sri Balwant Rai Mehta  
Diwan Chaman Lall.

4. *Staff and Finance Committee:*

Shri Bhavanji Arjan Khimji.  
Shri K. Santhanam.

There being only as many candidates as there are vacancies in all cases, I have great pleasure in declaring these members to be duly elected to the respective Committees.

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RESOLUTION ON THE INDIAN NATIONAL FLAG<sup>1</sup>

(i)

The Honourable Pandit Jawaharlal Nehru (*United Provinces: General*): Mr. President, it is my proud privilege to move the following Resolution:

“Resolved that the National Flag of India shall be horizontal tricolour of deep Saffron (Kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel in navy blue to represent the *Charkha*. The design of the Wheel shall be that of the Wheel (*Chakra*) which appears on the abacus of the Sarnath Lion Capital of Asoka.

The diameter of the Wheel shall approximate to the width of the white band.

The ratio of the width to the length of the Flag shall ordinarily be 2:3.

This resolution, Sir, is in simple language, in a slightly technical language and there is no glow or warmth in the words that I have read. Yet I am sure that many in this House will feel that glow and warmth which I feel at the present moment, for behind this Resolution and the Flag which I have the honour to present to this House for adoption lies history, the concentrated history of a short span in a nation's existence. Nevertheless, sometimes in a brief period we pass through the track of centuries. It is not so much the mere act of living that counts but what one does in this brief life that is ours; it is not so much the mere existence of a nation that counts but what that nation does during the various

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1. C.A.D. July 22, 1947, Vol. IV, pp. 737-62.



## RESOLUTION ON NATIONAL FLAG

periods of its existence; and I do venture to claim that in the past quarter of a century or so India has lived and acted in a concentrated way and the emotions which have filled the people of India represent not merely a brief spell of years but something infinitely more. They have gone down into history and tradition and have added themselves on to the vast history and tradition, which is our heritage in this country. So, when I move this Resolution, I think of this concentrated history through which all of us have passed during the last quarter of a century. Memories crowd in upon me. I remember and many in this House will remember how we looked up to this Flag not only with pride and enthusiasm but with a tingling in our veins; also how, when we were sometimes down and out, then again the sight of this Flag gave us courage to go on. Then, many who are not present here today, many of our comrades who have passed, held on to this Flag, some amongst them even unto death, and handed it over as they sank, to others to hold it aloft. So, in this simple form of words, there is much more than will be clear on the surface. There is the struggle of the people for freedom with all its ups and downs and trials and disasters and there is, finally today as I move this Resolution, a certain triumph about it—a measure of triumph in the conclusion of that struggle.

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So I present this Flag to you. This Resolution defines the Flag which I trust you will adopt. In a sense this Flag was adopted, not only by a formal resolution, but by popular acclaim and usage, adopted much more by the sacrifice that surrounded it in the past few decades. We are in a sense only ratifying that popular adoption. It is a Flag which has been variously described. Some people, having misunderstood its significance, have thought of it in communal terms and believe that some part of it represents this community or that. But I may say that when this Flag was devised there was no communal significance attached to it. We thought of a design for a Flag which was beautiful because the symbol of a nation must be beautiful to look at.

Now, I realise fully, as this House must realise, that this triumph of ours has been marred in many ways. There have been, especially in the past few months, many happenings which cause us sorrow, which has gripped our hearts. We have seen parts of this dear motherland of ours cut off from the rest. We have seen large numbers of people suffering tremendously, large numbers wandering about like waifs and strays, without a home. We have seen many other things which I need not repeat to this House, but which we cannot forget. All this sorrow has dogged our footsteps.

Even when we have achieved victory and triumph, it still dogs us and we have tremendous problems to face in the present and in the future. Nevertheless it is true I think—I hold it to be true—that this moment does represent a triumph and a victorious conclusion of all our struggles, for the moment. (*Hear, hear.*)

There has been a very great deal of bewailing and moaning about various things that have happened. I am sad, all of us are sad at heart, because of those things. But let us distinguish that from the other fact of triumph, because there is triumph in victory, in what has happened. It is no small thing that that great and mighty empire which has represented imperialist domination in this country has decided to end its days here. That was the objective we aimed at.

We have attained that objective or shall attain it very soon. Of that there is no doubt. We have not attained the objective exactly in the form in which we wanted it. The troubles and other things that accompanied our achievement are not to our liking. But we must remember that it is very seldom that people realise the dreams that they have dreamt. It is very seldom that the aims and objectives with which we start are achieved in their entirety in life, in an individual's life or in a nation's life.

We have many examples before us. We need not go into the distant past. We have examples in the present or in the recent past. Some years back, a great war was waged, a world war bringing terrible misery to mankind. That war was meant for freedom and democracy and the rest. That war ended in the triumph of those who said they stood for freedom and democracy. Yet, hardly had that war ended when there were rumours of fresh wars and fresh conflicts.

Three days ago, this House and this country and the world was shocked by the brutal murder in a neighbouring country of the leaders of the nation. Today one reads in the papers of an attack by an imperialist power on a friendly country in South-East Asia. Freedom is still far off in this world and nations, all nations in greater or lesser degree, are struggling for their freedom. If we in the present have not exactly achieved what we aimed at, it is not surprising. There is nothing in it to be ashamed of. For I do think our achievement is no small achievement. It is a very considerable achievement, a great achievement. Let no man run it down because other things have happened which are not to our liking. Let us keep these two things apart. Look at any country in the wide world. Where is the country today, including the great and big powers, which is not full of terrible problems, which

## RESOLUTION ON NATIONAL FLAG

is not in some way, politically and economically, striving for freedom which somehow or other eludes its grasp? The problems of India in this wider context do not appear to be terrible. The problems are not anything new to us. We have faced many disagreeable things in the past. We have not held back. We shall face all the other disagreeable things that face us in the present or may do so in the future and we shall not flinch and we shall not falter and we shall not quit. (*Loud applause.*)

So, in spite of everything that surrounds us, it is in no spirit of down-heartedness that I stand up in praise of this Nation for what it has achieved. (*Renewed cheers*) It is right and proper that at this moment we should adopt the symbol of this achievement, the symbol of freedom. Now what is this freedom in its entirety and for all humanity? What is freedom and what is the struggle for freedom and when does it end? As soon as you take one step forward and achieve something further steps come up before you. There will be no full freedom in this country or in the world as long as a single human being is un-free. There will be no complete freedom as long as there is starvation, hunger, lack of clothing, lack of necessities of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that. We may not accomplish that because it is a terrific task. But we shall do our utmost to accomplish that task and hope that our successors, when they come, have an easier path to pursue. But there is no ending to that road to freedom. As we go ahead, just as we sometimes in our vanity aim at perfection, perfection never comes. But if we try hard enough we do approach the goal step by step. When we increase the happiness of the people, we increase their stature in many ways and we proceed to our goal. I do not know if there is an end to this or not, but we proceed towards some kind of consummation which in effect never ends.

We thought of a Flag which in its combination and in its separate parts would somehow represent the spirit of the nation, the tradition of the nation, that mixed spirit and tradition which has grown up through thousands of years in India. So, we devised this Flag. Perhaps I am partial but I do think that it is a very beautiful Flag to look at purely from the point of view of artistry, and it has come to symbolise many other beautiful things, things of the spirit, things of the mind, that give value to the individual's life and to the nation's life, for a nation does not live merely by material things, although they are highly important. It is important that we should have the good things of the world, the material possessions of the world, that our people should have the necessities of life. That is of the utmost importance.

Nevertheless, a nation, and especially a nation like India with an immemorial past, lives by other things also, the things of the spirit. If India had not been associated with these ideals and things of the spirit during these thousands of years, what would India have been? It has gone through a very great deal of misery and degradation in the past, but somehow even in the depths of degradation, the head of India has been held high, the thought of India has been high, and the ideals of India have been high. So we have gone through these tremendous ages and we stand up today in proud thankfulness for our past and even more so for the future that is to come for which we are going to work and for which our successors are going to work. It is our privilege, of those assembled here, to mark the transition in a particular way, in a way that will be remembered.

I began by saying that it is my proud privilege to be ordered to move this Resolution. Now, Sir, may I say a few words about this particular Flag? It will be seen that there is a slight variation from the one many of us have used during these past years. The colours are the same, a deep saffron, a white and a dark green. In the white previously there was the Charkha which symbolised the common man in India, which symbolised the masses of the people, which symbolised their industry and which came to us from the message which Mahatma Gandhi delivered. (*Cheers*) Now, this particular Charkha symbol has been slightly varied in this Flag, not taken away at all. Why then has this been varied? Normally speaking, the symbol on one side of the Flag should be exactly the same as on the other side. Otherwise, there is a difficulty which goes against the rules. Now, the Charkha, as it appeared previously on this Flag, had the wheel on one side and the spindle on the other. If you see the other side of the Flag, the spindle comes the other way and the wheel comes this way; if it does not do so, it is not proportionate, because the wheel must be towards the pole, not towards the end of the Flag. There was this practical difficulty. Therefore, after considerable thought, we were of course convinced that this great symbol which had enthused people should continue but that it should continue in a slightly different form, that the wheel should be there, not the rest of the Charkha, that is the spindle and the string which created this confusion, that the essential part of the Charkha should be there, that is the wheel. So, the old tradition continues in regard to the Charka and the wheel. But what type of wheel should we have? Our minds went back to many wheels but notably one famous wheel, which had appear-

## RESOLUTION ON NATIONAL FLAG

ed in many places and which all of us have seen, the one at the top of the capital of the Asoka column and in many other places. That wheel is a symbol of India's ancient culture, it is a symbol of the many things that India had stood for through the ages. So we thought that this Chakra emblem should be there, and that wheel appears. For my part, I am exceedingly happy that in this sense indirectly we have associated with this Flag of ours not only this emblem but in a sense the name of Asoka, one of the most magnificent names not only in India's history but in world history. It is well that at this moment of strife, conflict and intolerance, our minds should go back towards what India stood for in the ancient days and what it has stood for, I hope and believe, essentially throughout the ages in spite of mistakes and errors and degradations from time to time. For, if India had not stood for something very great, I do not think that India could have survived and carried on its cultural traditions in a more or less continuous manner through these vast ages. It carried on its cultural tradition, not unchanging, not rigid, but always keeping its essence, always adapting itself to new developments, to new influences. That has been the tradition of India, always to put out fresh blooms and flowers, always receptive to the good things that it receives, sometimes receptive to bad things also, but always true to her ancient culture. All manner of new influences through thousands of years have influenced us, while we influenced them tremendously also, for you will remember that India has not been in the past a tight little narrow country, disdaining other countries. India throughout the long ages of her history has been connected with other countries, not only connected with other countries, but has been an international centre, sending out her people abroad to far-off countries carrying her message and receiving the message of other countries in exchange, but India was strong enough to remain embedded on the foundations on which she was built, although changes, many changes, have taken place. The strength of India, it has been said, consists in this strong foundation. It consists also in its amazing capacity to receive, to adapt what it wants to adapt, not to reject because something is outside its scope, but to accept and receive everything. It is folly for any nation or race to think that it can only give to and not receive from the rest of the world. Once a nation or a race begins to think like that, it becomes rigid, it becomes ungrowing; it grows backwards and decays. In fact, if India's history can be traced, India's periods of decay are those when it closed herself up into a shell and refused to receive or to look at the outside world. India's greatest periods are those when she stretched her hand to others in far-off countries, sent her emis-

saries, ambassadors, her trade agents and merchants to these countries and received ambassadors and emissaries from abroad.

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Now because I have mentioned the name of Asoka, I should like you to think that the Asokan period in Indian history was essentially an international period of Indian History. It was a period when India's ambassadors went abroad to far countries and went abroad not in the way of an Empire and Imperialism but as ambassadors of peace and culture and goodwill. (*Cheers*)

Therefore this Flag that I have the honour to present to you is not, I hope and trust, a Flag of Empire, a Flag of domination over anybody, but a Flag of freedom not only for ourselves, but a symbol of freedom to all people who may see it. (*Cheers*) And wherever it may go—and I hope it will go far—not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may go it will bring a message, I hope, of freedom to those people, a message of comradeship, a message that India wants to be friends with every country of the world and India wants to help any people who seek freedom. (*Hear, hear.*) That I hope will be the message of this Flag everywhere and I hope that in the freedom that is coming to us, we will not do what many other people or some other people have unfortunately done, that is, in a new-found strength suddenly expand and become imperialistic in design. If that happened that would be a terrible ending to our struggle for freedom. (*Hear, hear.*)

But there is that danger and, therefore, I venture to remind this House of it—although this House needs no reminder—there is this danger in a country suddenly unshackled in stretching out its arms and legs and trying to hit out at other people. And if we do that we become just like other nations who seem to live in a kind of succession of conflicts and preparation for conflict. That is the world today unfortunately.

In some degree I have been responsible for the foreign policy during the past few months and always the question is asked here or elsewhere: "What is your foreign policy? To what group do you adhere in this warring world?" Right at the beginning I venture to say that we propose to belong to no power group. We propose to function as far as we can as peace-makers and peace-bringers because today we are not strong enough to be able to have our way. But at any rate we propose to avoid all entanglements with power politics in the world. It is not completely possible to

## RESOLUTION ON NATIONAL FLAG

do that in this complicated world of ours, but certainly we are going to do our utmost to that end.

It is stated in this Resolution that the ratio of the width to the length of the Flag shall ordinarily be 2 : 3. Now you will notice the word "ordinarily". There is no absolute standard about the ratio because the same Flag on a particular occasion may have a certain ratio that might be more suitable or on any other occasion in another place the ratio might differ slightly. So there is no compulsion about this ratio. But generally speaking, the ratio of 2 : 3 is a proper ratio. Sometimes the ratio 2 : 1 may be suitable for a Flag flying on a building. Whatever the ratio may be, the point is not so much the relative length and breadth, but the essential design.

So, Sir, now I would present to you not only the Resolution but the Flag itself.

There are two of these National Flags before you. One is on silk—the one I am holding—and the other on the other side is of cotton Khadi.

I beg to move this Resolution. (*Cheers*)

(ii)

Sir S. Radhakrishnan (*United Province: General*): Mr. President, Sir, I do not wish to say very much after the very eloquent way in which Pandit Jawaharlal Nehru presented this Flag and the Resolution to you. The Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty. Those who fought under this Flag are mainly responsible for the arrival of this great day of Independence for India. Pandit Jawaharlal has pointed out to you that it is not a day of joy unmingled with sorrow. The Congress fought for unity and liberty. The unity has been compromised, liberty too, I feel, has been compromised, unless we are able to face the task which now confront us with courage, strength and vision. What is essential to-day is to equip ourselves with new strength and with new character if these difficulties are to be overcome and if the country is to achieve the great ideal of unity and liberty which it fought for. Times are hard. Everywhere we are consumed by phantasies. Our minds are haunted by myths. The world is full of misunderstandings, suspicions and distrusts. In these difficult days, it depends on us under what banner we fight. Here we are putting in the very centre the white, the white of the Sun's rays. The white means the path of light. There is darkness even at noon as some people have urged,



but it is necessary for us to dissipate these clouds of darkness and control our conduct by the ideal light, the light of truth, of transparent simplicity which is illustrated by the colour of white.

We cannot attain purity, we cannot gain our goal of truth, unless we walk in the path of virtue. The Asoka wheel represents to us the wheel of the Law, the wheel of Dharma. Truth can be gained only by the pursuit of the path of Dharma, by the practice of virtue. Truth—Satya, Dharma—Virtue, these ought to be the controlling principles of all those who work under this Flag. It also tells us that Dharma is something which is perpetually moving. If this country has suffered in the recent past, it is due to our resistance to change. There are ever so many challenges hurled at us and if we have not got the courage and the strength to move along with the times, we will be left behind. There are ever so many institutions which are worked into our social fabric, like caste and untouchability. Unless these things are scrapped we cannot say that we either seek truth or practise virtue. This wheel, which is a rotating thing, which is a perpetually revolving thing, indicates to us that there is death in stagnation. There is life in movement. Our Dharma is Sanatana, eternal, not in the sense that it is a fixed deposit but in the sense that it is perpetually changing. Its uninterrupted continuity is its Sanatana character. So even with regard to our social conditions it is essential for us to move forward.

The red, the orange, the *bhagwa* colour represents the spirit of renunciation. It is said:

*Sarvatyaagaah Raajadharmeshu Drishtaah.*

All forms of renunciation are to be embodied in Raja Dharma; Philosophers must be Kings. Our leaders must be disinterested. They must be dedicated spirits. They must be people who are imbued with the spirit of renunciation which that saffron colour has transmitted to us from the beginning of our history. That stands for the fact that the world belongs not to the wealthy, not to the prosperous, but to the meek and the humble, the dedicated and the detached. That spirit of detachment, that spirit of renunciation is represented by the orange or the saffron colour and Mahatma Gandhi has embodied it for us in his life and the Congress has worked under his guidance and with his message. If we are not imbued with that spirit of renunciation in these difficult days, we will again go under.

The tree is there—our relation to the soil, our relation to the plant life here on which all other life depends. We must build our Paradise here on this green earth. If we are to succeed in this en-



## RESOLUTION ON NATIONAL FLAG

terprise, we must be guided by truth (white), practise virtue (wheel), adopt the method of self-control and renunciation (Saffron). This Flag tells us 'Be ever alert, be ever on the move, go forward, work for a free, flexible, compassionate, decent, democratic society in which Christians, Sikhs, Moslems, Hindus, Buddhists will all find a safe shelter.

Thank you. (*Loud cheers.*)

(iii)

Mrs. Sarojini Naidu (*Bihar: General*): Mr. President, the House knows that I had refused over and over again this morning to speak. I thought that the speech of Jawaharlal Nehru—so epic in its quality of beauty, dignity and appropriateness—was sufficient to express the aspirations, emotions and the ideals of this House. But I was happy when I saw the representatives of the various Communities that constitute this House rise up and pledge their allegiance to this Flag. I was especially reminded by the people that sit behind me, from the Province of Bihar, that it was at the risk of my life and seat in their province that freedom was won, and should I forget to mention that this Flag, so willingly and proudly accepted today by the House, has for its symbol the Dharma Chakra of Asoka, whom they claim (I do not know with what historical veracity) to be a Bihari! But if I am speaking here today, it is not on behalf of any community, or creed or sex, though women members of this House are very insistent that a woman should speak. I think that the time has come in the onward march of the world-civilisation when there should be no longer any sex consciousness or sex separation in the service of the country. I therefore speak on behalf of that ancient reborn Mother with her undivided heart and indivisible spirit, whose love is equal for all her children no matter what corner they come from, in what temples or mosques they worship, what language they speak or what culture they profess.

\* \* \* \* \*

Many of my friends have spoken of this Flag with the poetry of their own hearts. I as a poet and as a woman, I am speaking prose to you today when I say that we women stand for the unity of India. Remember under this Flag there is no prince and there is no peasant, there is no rich and there is no poor. There is no privilege; there is only duty and responsibility and sacrifice. Whether we be Hindus or Muslims, Christians, Jains, Sikhs or Zoroastrians and others, our Mother India has one undivided heart and one indivisible spirit. Men and women of reborn India, rise and salute this Flag. I bid you, rise and salute the Flag. (*Loud Cheers.*)

NOTE ON DRAFT PROVISIONAL CONSTITUTIONAL ORDER,  
JULY 30, 1947

The attached draft order to be made by the Governor-General under sections 8(2) and 9(1) (c) of the Indian Independence Act, 1947, provides for the adaptation of the Government of India Act, 1935, as subsequently amended, and the India (Central Government and Legislature) Act, 1946, in their application to the Dominion of India on and after the 15th August, 1947. The draft has been prepared in consultation with the expert committee appointed by the Indian Cabinet for the purpose. At one stage a draft of the adaptations was also shown to a small committee of representatives of the acceding Indian States and a few suggestions made by them from the point of view of those States have been provisionally incorporated in this draft order.

2. Article 7 of the substantive part of the order is designed to eliminate the necessity for making new orders of appointments with effect from the 15th August to the enormous number of civil posts under the Government of the Dominion or of a Province. The general rule furnished by the Article is that all persons now serving under the Centre shall be deemed to have been duly appointed to the corresponding post under the Dominion Government, but this is subject to the general orders of Government enabling officers to opt for Pakistan and to any special orders that may be found necessary hereafter in particular cases or classes of cases. Persons serving in connection with the affairs of the two split Provinces are not brought within the general rule, since so far as West Bengal and East Punjab are concerned the position is the reverse of what obtains between India and Pakistan. These two Provinces will have to make general orders of their own soon after the 15th August providing for the reappointment of those persons now serving in connection with the affairs of the Provinces of Bengal or the Punjab who are retained for service in connection with the affairs of the Provinces of West Bengal or East Punjab as the case may be.

The Provisos to paragraph (1) and paragraph (2) of the Article deal with two special cases in the manner desired by the Finance Department (India).

3. Turning now to the Schedule to the Order, section 6 of the Government of India Act, 1935, as proposed to be adapted has the approval of the States' representatives. As compared with the existing section 6 the main differences are—

(a) in sub-section (1), the Ruler accedes "on behalf of the

## NOTE ON CONSTITUTIONAL ORDER

State" instead of "for himself, his heirs and successors";

- (b) in sub-section (4), corresponding to existing sub-section (6), the provision requiring an Instrument of Accession to be executed by the Ruler *himself* has been omitted; and
- (c) existing sub-sections (4), (5) and (7) have also been omitted.

4. As advised by the expert committee, all sub-sections of section 22, except sub-section (3), have been omitted leaving the Constituent Assembly free to function under the same President in both its capacities, but enabling the President to draw such salaries as may be determined in the first instance by the Government.

5. In the revised section 30 provision is made for enabling the Legislature to deal with pending Bills to such extent as they think fit.

6. A proviso has been added to section 35(3) (which debars expenditure from the revenues of the Dominion unless it is specified in a schedule to the authenticated financial statement) so as to enable the Governor-General to authorise or ratify such expenditure during the transitional period when there will be no proper budget.

7. As advised by the expert committee, section 42 of the Act has been replaced by a section in more or less the same terms as section 72 of the Ninth Schedule which is the present provision, so as to enable the Governor-General to make ordinances in an emergency, whether or not the Legislature is in session. Past experience has shown the necessity for occasional resort to the ordinance-making power even when the Legislature is in session, and it is considered that the section should be in this form rather than in the form contemplated in section 42 of the present Act.

8. The final adaptation of sections 46 and 47 depends on the outcome of the negotiations relating to Berar which are still going on with H.E.H. the Nizam of Hyderabad.

9. A proviso is proposed to be added to sub-section (3) of section 80 for reasons analogous to those indicated above in paragraph 6. The Provinces of West Bengal and East Punjab will have to start their existence without a properly authenticated budget schedule, and it will be necessary for the Governor concerned to authorise or ratify expenditure from Provincial revenues for the current year, until a budget is duly passed by the Legislature.

10. Section 83 (which requires certain educational grants to be made for the benefit of the Anglo-Indian and European communities in the Provinces) has been omitted for obvious reasons.

11. Sections 111 to 121 containing the anti-discriminatory provisions and placing British subjects domiciled in the U.K. in a

privileged position are also proposed to be omitted. The implementation of these sections in the executive field rests on the Governor-General's discretionary powers which have been expressly abrogated by the Indian Independence Act.

12. The adaptations proposed in section 134 are at the instance of the States' representatives. They contended that section 131 as proposed to be adapted placed the Government of India in the position of the final arbiter of the dispute between an acceding State and a Province in the matter of water supplies, without any possibility of an appeal to an independent authority like His Majesty in Council. It was further stressed by them that if the point had not escaped their attention they would have tried to secure a special declaration in the Instrument of Accession that the provisions of section 131 to 133 are not to apply in relation to the acceding States. It is therefore proposed to adapt section 134 producing the same effect as the Rulers could have produced by an express declaration under the section as it stands.

13. With regard to section 200(2) and section 220(2) which provide for the appointment by His Majesty of the judges of the Federal Court and the High Courts, the expert committee considered that for the future the appointing authority should be the Governor-General instead of His Majesty. At an earlier stage, when the problems relating to the future of the Federal Court and of the Calcutta and Lahore High Courts were submitted to the Partition Council for decision, it was expressly decided by that Council that appointments to the new High Courts, as for existing High Courts, should be made by His Majesty after consulting the Dominion Government concerned. The adaptations were therefore drafted on this footing, but the point is specially brought to the notice of the Cabinet, as the expert committee have expressed strong views on the subject in the note which is attached as an annexure.

14. In section 311(2), it was originally proposed to insert definitions of "Indian State" and "Ruler" in the following terms:—

“ ‘Indian State’ means any territory recognised by the Dominion as being such a State, whether described as a State, an Estate, a Jagir or otherwise;

‘Ruler’ in relation to an Indian State means the Prince, Chief or other person recognised by the Dominion as the Ruler of the State”.

These followed the existing definitions in Section 311(1), with the substitution of “the Dominion” for “His Majesty”. Strong objection was taken by the States' representatives to the insertion of these two definitions. They apprehended that this was a covert

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method of reintroducing paramountcy. They suggested that any territory which at present is recognised to be an Indian State should continue to be so recognised for the purposes of the Government of India Act, 1935, and that in regard to succession, the matter should be left to be determined in accordance with the laws and usages of the particular State and the Dominion should not be in a position to recognise one particular claimant in preference to another contrary to those laws and usages. The lack of a definition will not, it is thought, create any serious difficulties in interpreting the provisions of the Act referring to Indian States and Rulers, and it is therefore proposed not to define the expressions in the adapted Act.

15. The proposed adaptations of the Third Schedule have been submitted separately for the approval of the Cabinet.

16. The adaptations of the Fifth and Sixth Schedules take into account the decisions of the Partition Council regarding the abolition of the Upper Chamber in West Bengal and Assam, the abolition of special territorial constituencies for Europeans in all Provincial Legislatures and the reduction of European representation in commerce, industry, mining and planting constituencies in Bengal and Assam.

17. The draft order which has been named the India (Provisional Constitution) Order 1947 is submitted for the consideration and approval of the Cabinet.

K.V.K. Sundaram

4.8.1947

According to the established conventions and working principles of the Dominion Constitutions and the terms of Statutes themselves in most cases, all functions of His Majesty are discharged only by and through and in the name of the Governor-General who has necessarily to act on the advice of the Ministers of the Dominion. The statutory recognition of the functions of the Crown being discharged by the Crown's representative in the Dominions is a necessary incident of Dominion Status. Under the established principles of the British Constitution, the Crown can only act through the accredited constitutional or statutory agencies. When the Crown acts in the right of the Dominion, he acts through and in the name of the Governor-General.

In the case of Provinces, where a Province is a unit of a Dominion, or of States as in Australia, the Crown acts through the statutory or constitutional agent of the Crown in the Province or the State, as the case may be.

This principle is recognised in all Dominion Constitutions. For example, section 72 of the Australian Constitution provides: "The Justices of the High Court and the other Courts created by the Parliament shall be appointed by the Governor-General in Council."

The South African Constitution in section 100 provides that the Chief Justice of South Africa and the Judges of appeal shall be appointed by the Governor-General in Council (meaning of course the South African Cabinet).

The Indian Dominion, from a purely legal and constitutional point of view, is even on a higher footing than the other Dominions. For example, the very title of the Act, "Independence Act", though it only puts in statutory form what has been achieved in fact by the Dominions in the British Commonwealth as a matter of Constitutional Convention and growth, I should think, gives India even a higher status than that of other Dominions. The moot point under the Statute of Westminster as to whether a Dominion can, under the Statute, sever its link with the British Commonwealth is solved by section 6 of the Indian Independence Act, 1947, as section 6 in terms enables the Dominions to repeal and modify the Independence Act itself and to enact a law repealing, or repugnant to the provisions of the Constitution Act itself.

On all the above grounds, I am distinctly of opinion that, in all cases of appointment, etc., whether of Judges of the Federal Court or of the High Court or of similar officers, the Governor-General will have to take the place of His Majesty. The mere fact that the instrumentality of a Letters Patent may not be available to the Governor-General will not affect the question. If he cannot issue a Letters Patent, he will make the appointment by an order. There is nothing which Judges and other appointees need consider to be *infra dig* in an appointment being made by order in the name of the Governor-General acting on the advice of Ministers.

Sd: A. Krishnaswami 30.7.47

I agree.

Sd: K. M. Munshi 30.7.47

Sd: N. Gopalaswamy 30.7.47

I concur in the conclusions set out in the last paragraph. They do not affect judges already appointed, but only new judges.

Sd: B. N. Rau 30.7.47

*Draft*

#### **THE INDIA (PROVISIONAL CONSTITUTION) ORDER, 1947**

Whereas by sub-section (2) of section 8 of the Indian Independence Act, 1947 (hereafter in the recitals to this Order referred to

## NOTE ON CONSTITUTIONAL ORDER

as the said Act), it is provided that except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of the said section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the provisions of the Government of India Act, 1935, and that the provisions of that Act shall, so far as applicable and subject to any express provisions of the said Act and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section of the said Act, have effect accordingly;

And whereas by paragraph (c) of sub-section (1) of section 9 of the said Act it is provided that the Governor-General shall by order make such provision as appears to him to be necessary or expedient for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, in its application to the separate new Dominions;

And Whereas by sub-section (4) of section 19 of the said Act it is provided that in the said Act, except so far as the context otherwise requires, references to the Government of India Act, 1935, include reference to any enactments amending or supplementing that Act and in particular references to the India (Central Government and Legislature) Act, 1946;

NOW THEREFORE in exercise of the powers conferred by the said provisions of the said Act, the Governor-General is pleased to make the following order:—

1. (1) This Order may be cited as the India (Provisional Constitution) Order, 1947.

(2) It shall come into force on the fifteenth day of August 1947, which day is hereinafter referred to as “the appointed day”.

2. (1) In this Order “India” means the Dominion of India.

(2) Where a provision of the Government of India Act, 1935, has been amended before the appointed date, a reference to that provision in the Schedule to this Order shall be read as referring to the provision as in force immediately before the appointed day.

(3) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. (1) As from the appointed day, the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day, and the India (Central Govern-



ment and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and modifications directed in the following provisions of this paragraph and in the Schedule to this Order.

(2) The following expressions shall be omitted wherever they occur, namely, "in his discretion", "acting in his discretion" and "exercising his individual judgment".

(3) For each expression specified in the first column of the following Table, wherever that expression occurs, there shall be substituted the expression specified in the corresponding entry in the second column of the Table.

Table

Existing Indian law	existing law
existing Indian Act	existing Act
Federation	Dominion
Federal Government	Dominion Government
Federal law	Dominion law
Federal Legislature	Dominion Legislature
Federated	Acceding
a Federal	an Acceding

4. Where the Schedule to this Order requires that in any specified provision certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, unless otherwise expressly provided, be made wherever the words referred to appear in that provision.

5. Where any instrument is in force under any provision of the Government of India Act, 1935, immediately before the appointed day, and that provision remains in force, whether with or without modifications, on and after the appointed day, the said instrument shall, so far as applicable and with any necessary modifications, remain in force as from that day as if it were an instrument of the appropriate kind, duly made by the appropriate authority under the said provision as in force after that day, and may be varied or revoked accordingly.

6. Where any law made by the Governor of a Province by virtue of section 93 of the Government of India Act, 1935, is in force immediately before the appointed day, the said law, notwithstanding that the said section is directed to be omitted in the Schedule to this Order or that by reason of such omission a Procla-



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mation under the said section ceases to have effect, shall remain in force for the period for which it would have remained in force if the said section had been at all material times in operation.

7. (1) Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor-General or Governor-General in Council or of a Province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connection with the affairs of the Dominion of India or, as the case may be, of the Province.

Provided that the preceding provisions of this paragraph shall not apply in relation to the civil post of the Auditor General of India, which post as constituted by section 166 of the Government of India Act, 1935, as originally enacted shall cease to exist on the appointed day, and the person who immediately before that day is holding that post shall not be deemed to be appointed to the corresponding post in connection with the affairs of the Dominion of India.

(2) Notwithstanding that section 170 of the Government of India Act, 1935, is directed to be omitted in the Schedule to this Order, the person holding the office of the Auditor of Indian Home Accounts immediately before the appointed day is hereby authorised to continue, until such date as the Governor-General may specify, to perform such duties, and exercise such powers, in relation to transactions in the United Kingdom affecting the revenues of India or of any Province thereof as he was before the appointed day performing or exercising under the provisions of the said section 170.

### THE SCHEDULE

#### I. *The Government of India Act, 1935.*

Section	Adaptations
2	Omit.
3	For this section substitute:— <div style="margin-left: 40px;">“3. <i>The Governor-General.</i>—The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual.”</div>
4	Omit.
5	For this section substitute:— <div style="margin-left: 40px;">“5. <i>Establishment of Dominion.</i>—The Dominion of India set up by the Indian Independence Act, 1947, as from the fifteenth day of August 1947 is hereafter</div>

in this Act referred to as "the Dominion", and the said fifteenth day of August is hereafter in this Act referred to as "the date of the establishment of the Dominion".

For this section substitute:—

"6. *Accession of Indian States.*—(1) An Indian State shall be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State:—

- (a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State such functions as may be vested in them by order under this Act; and
- (b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State, and the limitations, if any, to which the power of the Dominion Legislature to make laws for the State, and the exercise of the executive authority of the Dominion in the State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by the Governor-General, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by any Dominion authority in relation to his State.

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(4) References in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(5) In this Act a State which has acceded to the Dominion is referred to as an Acceding State and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(6) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by the Governor-General under this section, copies of the Instrument and of the Governor-General's acceptance thereof shall be laid before the Dominion Legislature, and all courts shall take judicial notice of every such Instrument and acceptance."

7           In sub-section (2), omit all words after "by or under this Act".

8           In sub-section (1), for paragraphs (a), (b) and (c), substitute "to the matters with respect to which Dominion Legislature has power to make laws, including the exercise of rights, authority and jurisdiction in and in relation to areas outside the Dominion", and in the proviso omit paragraphs (iii) and (iv).

9           For this section substitute:—

          "*9. Council of ministers.*—There shall be a council of ministers to aid and advise the Governor-General in the exercise of his functions."

10          In sub-section (2), omit "either Chamber of". Omit sub-section (5).

11 to 15   Omit.

16          In sub-section (2), for "British India" substitute "any Governor's or Chief Commissioner's Province" and for "federal interests" substitute "Dominion interests". Omit sub-section (4).

17          In sub-section (2) omit all words after "the said business".

Omit subsections (4) and (5).

18 For this section substitute:—

“18. *Constitution of the Dominion Legislature.*—  
The powers of the Dominion Legislature under this Act shall until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly”.

19 In sub-section (1), omit “the Chambers of”. In sub-section (2), for “the Chambers” substitute “the Dominion Legislature”, omit “or either Chamber”, and omit paragraph (c).  
Omit sub-section (3).

20 In sub-section (1), omit “either Chamber of” and “or both Chambers assembled together”.

In subsection (2), omit “either Chamber of”, and for “a Chamber to whom any message is so sent” substitute “the Legislature”.

21 Omit “every counsellor”.

For “either Chamber, any joint sitting of the Chambers and any committee of the Legislature” substitute “the Dominion Legislature or any committee thereof”.

22 Omit subsections (1), (2), (3) and (5).

In subsection (4) for “and the Deputy President of the Council of State” substitute “of the Dominion Legislature”, for “salaries” substitute “salary”, and omit “respectively”.

23 Omit “or Speaker”.

In subsection (1), for “or joint sitting of the Chambers” substitute “of the Dominion Legislature”.

In subsection (2), omit “A Chamber of”.

In subsection (3), for “a Chamber” and “the Chamber” substitute “the Legislature”.

24 to 27 Omit.

28 In subsection (1), omit “either Chamber of”.

In subsection (2), for “the Chambers” substitute “the Dominion Legislatures”.

Omit subsections (3) and (4).

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In subsection (5), for “a Chamber” substitute “the Legislature”.

29 For “either Chamber” substitute “the Dominion  
Legislature”.

30 For this section substitute:—

“30. *Provision as to pending Bills:*—

(1) A Bill pending in the Dominion Legislature shall not lapse by reason of the prorogation of the Legislature.

(2) A Bill which, immediately before the establishment of the Dominion, was pending in the Legislative Assembly of the Indian Legislature may, subject to any provision to the contrary which may be included in rules made by the Dominion Legislature under section 38 of this Act, be continued in the Dominion Legislature as if the proceedings taken with reference to the Bill in the said Legislative Assembly had been taken in the Dominion Legislature”.

31 Omit.

32 In subsection (1) for “Chambers” substitute “Dominion Legislature”, and omit “or that he reserves the Bill for the signification of His Majesty’s pleasure”. Omit sub-sections (2) and (3).

33 In sub-section (1) omit “both Chambers of”.

In sub-section (2) omit all the words after “from other expenditure”.

In sub-section (3)—

(i) in paragraph (a) for “required to be made by Order in Council” substitute “made by or under the Third Schedule to this Act”;

(ii) for paragraph (c) substitute:—

“(c) the salaries and allowances of ministers, of the advocate-general, and of chief commissioners”;

(iii) omit paragraphs (e), (f) and (g).

Omit sub-section (4).

34 In sub-section (1) omit “either Chamber of” and “or paragraph (f)”.

In sub-section (2) for “Federal Assembly, and thereafter to the Council of State, and either Cham-

ber" substitute "Dominion Legislature which", and omit the proviso.

Omit sub-section (3).

35 In sub-section (1) for "Chambers" substitute "Legislature" and omit the proviso.

In sub-section (2) for "both Chambers" substitute "the Legislatures".

To sub-section (3), add:—

"Provided that expenditure from the said revenues during the period beginning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorised or ratified by general or special order of the Governor-General."

36 Omit "both Chambers of".

37 In sub-section (1) omit all words after "Governor-General".

In sub-section (3) for "either Chamber" substitute "the Dominion Legislature" and for "that Chamber" substitute "the Legislature".

38 In sub-section (1), omit "Each Chamber of" and the proviso.

Omit sub-sections (2) and (4).

In sub-section (3) after "with respect to" insert "the Legislative Assembly of" and for "Governor-General" substitute "President of that Legislature."

39 Omit.

40 Omit sub-section (2).

42 For this section substitute:—

"42. *Power of Governor-General to promulgate ordinances in cases of emergency.*—

The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of the Dominion or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation have the like force of law as an Act passed by the Dominion Legislature; but the power of making Ordinances under this section is subject to the like restrictions as the power of the Dominion Legislature under this

NOTE ON CONSTITUTIONAL ORDER

Act to make laws; and any Ordinance made under this section may be controlled or superseded by any such Act."

- 43 to 45 Omit.
- 46 In sub-section (1) for the words from "Bengal" to "Sind" substitute "West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces and Berar, Assam and Orissa."  
Omit sub-section (2).
- 47 to 49 (To be adapted later).
- 50 For this section substitute:—  
"50. *Council of Ministers*.—There shall be a council of ministers to aid and advise the Governor in the exercise of his functions".
- 51 Omit sub-section (5).
- 52-54 Omit.
- 55 Omit sub-section (4).
- 56-58 Omit.
- 59 In sub-section (3) omit all words after "said business".  
Omit sub-sections (4) and (5).
- 60 In sub-section (1) for "Bengal, the United Provinces, Bihar and Assam" substitute "the United Provinces and Bihar".
- 62 Omit sub-section (3).
- 63 Nil.
- 68 Omit sub-section (2).
- 69 In sub-section (1), in paragraph (e) omit "whether before or after the commencement of this part of this Act", and for "by a court in British India or in a State which is a Federated State" substitute "before the date of the establishment of the Dominion by a court in British India, or on or after that date by a court in a Governor's or Chief Commissioner's Province or an acceding State", and in paragraph (f) for "Federal" substitute "Dominion Legislature".
- 71 In sub-section (2) for the words from "commencement of this Part" to "Province" substitute "establishment of the Dominion enjoyed by members of that Chamber, or in the case of West Bengal and

East Punjab, by members of the Provincial Legislative Assemblies of Bengal and the Punjab, respectively”.

72 Omit all words after “Legislature”, and add the following proviso:—

“Provided that until other provision is so made, members of the Legislative Assemblies of West Bengal and East Punjab shall be entitled to receive salaries and allowances at such rates and upon such conditions as were immediately before the establishment of the Dominion applicable in the case of members of the Legislative Assemblies of Bengal and the Punjab, respectively.”

74 In sub-section (2) omit “or affects the discharge of any of his special responsibilities” and the last sentence.

76 In sub-section (1) omit “or that he reserves the Bill for the signification of His Majesty’s pleasure thereof”.

Omit Sub-section (2).

77 Omit.

78 In sub-section (2) omit all words after “from other expenditure”.

In paragraph (a) of sub-section (3) for “required to be made by Order in Council” substitute “made by or under the Third Schedule to this Act”.

Omit sub-section (4).

80 Omit the proviso to sub-section (1).

To sub-section (3), add:—

“Provided that expenditure from the revenues of the Province of West Bengal or East Punjab during the period beginning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorised or ratified by general or special order of the Governor”.

83 Omit.

84. In sub-section (1) omit the proviso.

In sub-section (3) omit the last sentence.



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For sub-section (3) substitute:—

“(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Dominion with respect to the Legislative Assemblies of Bengal and the Punjab, respectively, shall have effect in relation to the Legislative Assemblies of West Bengal and East Punjab, subject to such modifications and adaptations as may be made therein by the Speakers of those Assemblies”.

85 Omit.

86 Omit Sub-section (2).

88 For the proviso to sub-section (1) substitute:—

“Provided that the Governor shall not, without instructions from the Governor-General, promulgate any such ordinance if an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General, it had received assent of the Governor-General”.  
In sub-section (2) omit paragraph (b).

89 Omit.

90 Omit.

91 For this section substitute:—

“91. *Excluded areas and partially excluded areas.*—In this Act, the expressions ‘excluded area’ and ‘partially excluded’ area mean respectively such areas as were excluded or partially excluded areas immediately before the establishment of the Dominion”.

92 In sub-section (2) omit all words after “shall have no effect”.

Omit sub-section (3).

93 Omit.

94 In sub-section (1) omit “British Baluchistan”.  
Omit Sub-section (2).

95 Omit.

96 For this section substitute:—

“96. *The Andaman and Nicobar Islands.*—The Governor-General may make regulations for the

peace and good government of the Andaman and Nicobar Islands, and any regulations so made may repeal or amend any Act of the Dominion Legislature or any existing law which is for the time being applicable to the Province, and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Dominion Legislature which applies to the Province”.

97 For “His Majesty in Council” substitute “or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947”.

98 Omit.

99 In sub-section (1) for “for the whole or any part of British India or for any Federated State” substitute “(including laws having extra territorial operation) for the whole or any part of the Dominion”.  
Omit sub-section (2).

102 For sub-section (3) substitute:—

“(3) A Proclamation of Emergency may be revoked by a subsequent Proclamation”.

104 Omit sub-section (2).

105 Omit.

107 In sub-section (2) omit “or for the signification of His Majesty’s pleasure”, and “or of His Majesty”.

108 Omit.

109 In sub-section (2), in paragraph (a) for “by the Governor-General or by His Majesty” substitute “or by the Governor-General”, and in paragraph (b) for “either by the Governor-General or by His Majesty” substitute “by the Governor-General”.

110 Omit.

121 In the proviso to sub-section (2) omit “either Chamber of”.

Omit Sub-section (4).

In sub-section (5) for the words from “without prejudice” to “Governor of” substitute “The Executive Authority of the Dominion shall also extend to the giving of directions to”.

NOTE ON CONSTITUTIONAL ORDER

129 In sub-section (4) for "the Governor-General in his discretion" substitute "an arbitrator appointed by the Chief Justice of India".

In sub-section (5) omit all words after "any part thereof".

131 Omit the proviso to sub-sections (5) and (7), the words "His Majesty in Council or", and sub-section (9).

134 For "the Ruler whereof" substitute "unless the Ruler thereof", and for "are not to apply" substitute "are to apply".

135 Omit "His Majesty upon consideration of representations addressed to him by".

For "His Majesty in Council" substitute "the Governor-General".

136 Omit "and subject to the provisions of this Act with respect to the Federal Railway authority".

138 For "Federal" substitute "Dominion"; and for "subsequent Order in Council" substitute "Order of the Governor-General".

In sub-section (1) for "one per cent., or such other" substitute "such".

In sub-section (4) for "His Majesty in Council" substitute "Order of the Governor-General", and omit "or of the Federal Railway Authority".

139 Omit.

140 In sub-section (2) for "one-half or such greater proportion as His Majesty in Council may determine" substitute "such proportion as the Governor-General may by order determine".

142 For "His Majesty in Council" substitute "Order of the Governor-General", for "His Majesty" substitute "the Governor-General", and omit the proviso.

143 After sub-section (1) insert:—

"(1A) Nothing in the foregoing provisions of this Chapter authorises the levy of any duty or tax by the Dominion in any acceding State unless provision in that behalf is made in the Instrument of Accession of that State".

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- 145-149 Omit.
- 150 For "India" substitute "the Dominion".
- 151 Omit Sub-section (2).
- 152 Omit.
- 153 Omit "either Chamber of".
- 154-A Omit "the Federal Railway Authority or" and "that authority or".
- 155 In sub-section (1), for "British India" substitute "India",
- 157-161 Omit.
- 162 Omit "Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling".
- 163 In sub-section (4), for "the Governor-General and the decision of the Governor-General in his discretion shall be final" substitute "an arbitrator appointed by the Chief Justice of India, whose decision shall be final."
- 165 Omit.
- 166 In sub-section (1), for "His Majesty" substitute "the Governor-General".  
In sub-section (2), for "His Majesty in Council" substitute "Order of the Governor-General".  
In sub-section (3), for "His Majesty in Council" substitute "the Governor-General".
- 167 In sub-section (1), for "His Majesty" substitute "the Governor" and omit "after the expiration of two years from the commencement of Part III of this Act".  
In paragraph (b) of sub-section (2), for "sub-section (3)" substitute "sub-sections (2) and (3)".
- 170-173 Omit.
- 175 In sub-section (1), omit the proviso.  
In sub-section (2), omit "or of the exercise of the functions of the Crown in its relations with the Indian States".  
In sub-section (3), omit "Subject to the provisions of this Act with respect to the Federal Railway Authority."
- 176 Omit sub-section (2).

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- 177 Omit.
- 178 Omit all sub-sections except sub-section (3). In sub-section (3), after "this Act" insert "and of the Indian Independence Act, 1947".
- 179-199 Omit.
- 200 In sub-section (3), omit "in British India or in a Federal State".
- Add the following to sub-section (3):—
- "In this sub-section, the expression 'High Court' includes a High Court in an Acceding State and any court which was a High Court in British India."
- 201 For "His Majesty in Council" substitute "the Governor-General".
- 204 In paragraph (a) of the proviso to subsection (1)—
- In sub-paragraph (i), after the word "thereunder" insert "before the date of the establishment of the Dominion, or of an order made thereunder on or after that date, or the interpretation of the Indian Independence Act, 1947, or of any order made thereunder"; for sub-paragraph (iii) substitute—
- "(iii) arises under an agreement between that State and the Dominion or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute, and in the case of an agreement with a Province, has been made with the approval of the Governor-General."
- 205 In sub-section (1), omit "in British India", and after "made thereunder" insert "before the date of the establishment of the Dominion or any order made thereunder on or after that date, or as to the interpretation of the Indian Independence Act, 1947, or of any order made thereunder".
- 206 In sub-section (1), omit "in British India" and all words after "certificate as aforesaid".
- In sub-section (2), omit "in British India".
- In sub-section (3), omit "either Chamber of".
- 207 In sub-section (1), for "made thereunder or" substitute "made thereunder before the date of the establishment of the Dominion or an order made thereunder on or after that date, or concerns the in-

terpretation of the Indian Independence Act, 1947, or of an order made thereunder or concerns”.

208           In paragraph (a), for “made thereunder, or” substitute “made thereunder before the date of the establishment of the Dominion, or an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of an order made thereunder, or concerns”.

210           In sub-section (2), omit “as respects British India and the Federated States” and “in British India”, and for “British India or of any” substitute “a Governor’s Province, Chief Commissioner’s Province or”.

212           For “British India” substitute “any Governor’s Province or Chief Commissioner’s Province”, and for “thereunder” substitute “or order thereunder, or of the Indian Independence Act, 1947, or of any order thereunder”.

216           Omit sub-section (2).

217           For “His Majesty” substitute “the Governor-General”.

218           Omit “in British India”, and for “outside British India” substitute “outside India”.

219           For “British India” substitute “India”.

In sub-section (1) for the words from “Lahore” to “and in Sind” substitute “Patna and Nagpur, the High Court of East Punjab, the Chief Court in Oudh,” for “His Majesty in Council” substitute “an Act of the appropriate Legislature”, and in the proviso for the words from “has been made” to “then, as from” substitute “is made by His Majesty by Letters Patent for the establishment of a High Court to replace any court or courts mentioned in this sub-section, then, as from”.

Add the following sub-section:—

“(3) In this Chapter, ‘India’ means the territories comprised in the Governors’ Provinces and Chief Commissioners’ Provinces, and does not include any Acceding State”.

220           In sub-section (1), for “His Majesty in Council may fix” substitute “the Governor-General may by order fix”.

## NOTE ON CONSTITUTIONAL ORDER

In sub-section (3), for "British India" substitute "India", and after "shall be included" insert "and in computing the period during which a person has served as a judge of a High Court, or been a pleader of a High Court or held judicial office in India, any period before the establishment of the Dominion during which the person has served as a judge, or been a pleader of any High Court in British India, or has held judicial office in British India, as the case may be, shall be included".

221 For "His Majesty in Council" substitute "order of the Governor-General".

223 After "any other Act" insert, "to the provisions of any order made under the Indian Independence Act, 1947", and for "commencement of Part III of this Act" substitute "establishment of the Dominion".

228 Omit sub-section (2).

230 In sub-section (1), for "His Majesty in Council" substitute "The Governor-General", for "extend" substitute "by order extend", and for "British India" substitute "India".

In sub-section (2), for "commencement of Part III of this Act" substitute "establishment of the Dominion".

231 In sub-section (2) omit "and expenses".

232-236 Omit.

238 For "three last preceding section" substitute "last preceding section", and omit "in India".

239 Omit.

240 In sub-section (2), after "aforesaid" insert "who having been appointed by the Secretary of State or the Secretary of State in Council continues after the Establishment of the Dominion to serve under the Crown in India shall be dismissed from the service of His Majesty by any authority subordinate to the Governor-General or the Governor according as that person is serving in connection with the affairs of the Dominion or of a Province, and no other such person as aforesaid".

241 In sub-section (1), omit "after the commencement of Part III of this Act".

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In sub-sections (2) to (5) omit "in India".

In sub-section (3), in paragraph (a), for "some person empowered by the Secretary of State to give directions in that respect" substitute "the Governor-General or the Governor as the case may be", and in paragraph (b), for "Secretary of State or by some person empowered by the Secretary of State to give directions in that respect" substitute "Governor-General or the Governor as the case may be".

242 Omit sub-sections (1) and (2).

In sub-section (3), after "to posts in the" insert "railway".

244-252 Omit.

253 In sub-section (1), for "Orders in Council" substitute "orders of the Governor-General", and for "His Majesty" substitute "the Governor-General".

In sub-section (2) after "meaning of this Act" insert "as originally enacted".

Omit sub-section (3).

257-259 Omit.

260 For the words from "commencement of Part III" to the end of the sub-section substitute "establishment of the Dominion shall, if it would have been payable by the Government of any Province if the Indian Independence Act, 1947, had not been passed, be paid out of the revenues of that Province or, if that Province has ceased to exist, of such new Province as may be determined by orders made under that Act, and in any other case shall be paid out of the revenues of the Dominion of India or of Pakistan as may be so determined."

261 Omit.

262 Omit sub-sections (3) and (5).

In paragraph (a) of the proviso to sub-section (4) for "is in the permanent service of the Crown in India" substitute "was in the permanent service of the Crown in India (within the meaning of this Act as originally enacted)".

265 In sub-section (1) omit "in India".

266 In sub-section (3) omit "The Secretary of State as respects services and posts to which appointments



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are made by him", and "other" before "services and posts".

In sub-section (4) for the words from "the various communities" to "in India" substitute "communities or in the case of the subordinate ranks of police forces".

267 Omit all words after "Governor".

269-270 Omit.

271 In sub-section (1), for "Indian Code of Criminal Procedure" substitute "Code of Criminal Procedure, 1898" and for "Indian Code of Civil Procedure" substitute "Code of Civil Procedure, 1908", and omit "either chamber of".

Omit sub-section (2).

In sub-section (3), for "Indian Code of Civil Procedure" substitute "Code of Civil Procedure, 1908".

272-274 Omit.

275 Omit paragraph (c).

277 Omit sub-sections (2) and (3).

278-289 Omit.

290 In sub-section (1) for "His Majesty may by Order in Council" substitute "the Governor-General may by Order", and for the words from "before the draft" to "Chamber or Chambers of the Legislature" substitute "before making any such Order the Governor-General shall ascertain the views of the Government".

For sub-section (2) substitute:—

"(2) An order made under this sub-section may contain such provisions as the Governor-General may deem necessary or proper—

- (a) for varying the representation in the Dominion Legislature of any Governor's Province the boundaries of which are altered by the Order;
- (b) for varying the composition of the Legislature of any such Province;
- (c) where a new Governor's Province is created, for constituting the Legislature thereof;

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- (d) for apportionments and adjustments of and in respect of assets and liabilities; and
- (e) for other supplemental, incidental and consequential matters."

291 For "His Majesty in Council may from time to time make provision" substitute "in relation to any Provincial Legislature, provision may be made by Act of that Legislature".

292-294 Omit.

295 Omit sub-section (1).

296 In sub-section (1) for "British India" substitute "a Governor's or Chief Commissioner's Province".

298 In sub-section (1) omit "British".  
Omit sub-section (3).

299 In sub-section (1) omit "in British India". In sub-section (3) omit "either Chamber of".

300 Omit.

302 Omit.

303 In sub-section (1) for "Bengal" substitute "West Bengal".  
Omit sub-section (3).

305-A Omit.

306 In sub-section (1) for "against the Governor of a Province, or against the Secretary of State" substitute "or against the Governor of a Province, for "His Majesty in Council" substitute "the Governor-General", after "has been the Governor-General" insert "His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States", and in the proviso for "a Province or the Secretary of State" substitute "or a Province".

Omit sub-section (2).

307-310 Omit.

311 Omit sub-sections (1), (3), (4) and (5).

In sub-section (2)  
in the definition of "corresponding Province" for "His Majesty in Council" substitute "the Governor-General";

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in the definition of "existing law", for "commencement of Part III of this Act" substitute "establishment of the Dominion", and after "territories" insert "which were";

in the definition of "person" omit "in India, Burma or Aden";

in the definition of "Indian State Railway" omit "the Federal Railway Authority".

In sub-section (6) for "Federal" substitute "Dominion", and omit "or a Governor-General's Act" and "or a Governor's Act".

312-320

Omit.

First Schedule

Omit.

Second Schedule

Omit.

Third Schedule

In paragraph 1 omit all entries after the entry relating to the Governor-General, and insert:—

"The Governor of a Province...66,000 rupees. Provided that the annual salary payable to any person who having been the Governor of a Province immediately before the 15th day of August, 1947, continues to be the Governor of that Province, shall be the same as before that date."

In paragraph 2 for "fixed by His Majesty in Council" substitute "fixed, as respects the Governor-General by Act of the Dominion Legislature, and as respects a Governor by order of the Governor-General", and for "determined by His Majesty in Council" substitute "Governor-General".

In paragraph 3 for "His Majesty in Council" substitute "such an Act, or, as the case may be, an order, as aforesaid".

In paragraph 4 for "Order in Council" substitute "such an Act, or, as the case may be, an order, as aforesaid".

In paragraph 5 for "His Majesty in Council" substitute "such an Act, or, as the case may be, an order, as aforesaid".

After paragraph 6 insert:—

"7. Until other provision is made by Act of the Dominion Legislature, the Governor-General

## INDIAN CONSTITUTIONAL DOCUMENTS

shall be entitled to the same allowances and privileges as he was entitled to immediately before the date of the establishment of the Dominion under the rules and orders then in force."

Fourth   Sche-  
      dule

Omit "Emperor of India".

Fifth

Schedule

In paragraph 4, —

in sub-paragraph (ii) for "ten columns" substitute "nine columns", and omit "(e) the European community";  
omit the last sentence.

In paragraph 5, for "His Majesty in Council may deem" substitute "the Governor-General may by order declare", and omit "(v) for the election of persons to fill the European seats, if any".

In paragraph 8, for "fifteen to nineteen" substitute "fourteen to eighteen".

Omit paragraph 11.

In paragraph 12, omit "by a European".

In paragraph 14., for "fifth and sixth" substitute "and fifth", omit "the European community", for "seventh" substitute "sixth", and for "eighth" substitute "seventh".

In paragraph 15, for "His Majesty in Council may deem" substitute "the Governor-General may by order declare", and omit sub-paragraph (iii).

In paragraph 16, omit "a European constituency", and "a European".

In paragraph 19,—

for the definitions of "a European", "an Anglo-Indian", "an Indian Christian" and "the scheduled castes" substitute the following definitions:—

" 'a European' means a person whose father or any of whose other male progenitors in the male line is or was of European decent, and who is not a native of India or Pakistan or any Indian State;

'an Anglo-Indian' means a person whose father or any of whose other male progenitors in the

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male line is or was of European descent but who is a native of India, Pakistan or an Indian State;

‘an Indian Christian’ means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

‘the scheduled castes’ means such castes, races or tribes or parts of groups within castes, races or tribes, being castes, races, tribes, parts or groups of which appear to the Governor-General to correspond to the classes of persons formerly known as ‘the depressed classes’, as the Governor-General may by order specify.”;

for “His Majesty in Council may from time to time” substitute “Governor-General may from time to time by order”;

for “His Majesty in Council” in the definition of “prescribed” substitute “order of the Governor-General”.

In paragraph 20, for “His Majesty in Council” substitute “order of the Governor-General”.

For the tables of Seats substitute:—

Sixth

Schedule In Part I,—

in paragraph 5, omit “a European constituency” and “a European”;

in paragraph 6, omit “European constituency”;

in paragraph 12, for “British India police force” substitute “police force belonging to any Governor’s Province or Chief Commissioner’s Province”;

in sub-paragraph (1) of paragraph 13, omit “European” and for “Part I of the First Schedule” substitute “the Fifth Schedule”;

in sub-paragraph (2) of paragraph 13, for “an order in Council delimiting territorial constituencies” substitute “the Government of India (Provincial Legislative Assemblies) Order, 1936, or an Act of the Provincial Legislature”, after “any such Order in Council” insert “or Act”, and omit “European constituency”.

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In paragraph I of Part III omit "European".

In Part IV, —

in the Title, for "Bengal" substitute "West Bengal";

in sub-paragraph (1) of paragraph 1, omit Proviso (2);

in paragraph 14, for "Bengal" substitute "West Bengal" and omit "European constituencies" and "European constituency".

In Part VI, in the Title and in paragraph 10, for "the Punjab" substitute "East Punjab".

In Part IX, —

in paragraph 1, omit the proviso;

in paragraph 9A, omit "British".

Omit Parts X and XII.

Seventh

Schedule

In List I,—

for entry 1 substitute:—

"1. The naval, military and air force of the Dominion and any other armed forces raised or maintained by the Dominion; any armed forces which are not forces of the Dominion but are attached to or operating with any of the armed forces of the Dominion; central intelligence bureau; preventive detention for reasons of State connected with defence or external affairs";

in entry 2, omit "(not being cantonment areas of Indian State troops)", and omit "within British India";

in entry 9, for "Federal" substitute "Dominion";

in entry 17, after "domiciled in India" insert "or" and omit "or British subjects domiciled in the United Kingdom";

in entries 34 and 36, for "Federal control" substitute "Dominion Control";

for entry 39 substitute:—

"39. Extension of the powers and jurisdiction of members of a police force belonging to any province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another province without the consent of the Government of that province; ex-

## NOTE ON CONSTITUTIONAL ORDER

tension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."

in this entry 'province' includes a Chief Commissioner's province;

in entry 40, omit "and of any Order in Council made thereunder";

in entry 41, for the words from "Federal Ministers" to "Federal Assembly" substitute "Dominion Ministers and of the President and Deputy President of the Dominion Legislature", and omit "to such extent as is expressly authorised by Part II of this Act".

In List II,—

in entry 11, omit "and of any Order in Council made thereunder";

in entries 23 and 29, for "Federal" substitute "Dominion";

In entry 34 of List III, for "Federal" substitute "Dominion".

Eighth Schedule	Omit.
Ninth Schedule	Omit.

## *II. The India (Central Government and Legislature) Act, 1946 Adaptations.*

Section	1. Omit.
	2. For "Indian Legislature" substitute "Dominion Legislature".

In sub-section (2) for "Governor General in Council" substitute "Dominion".

In sub-section (3) omit "either Chamber of".

In sub-section (4) for "Federal" substitute "Dominion".

3. In sub-section (1) for the words "Indian Legislature" where they first occur substitute "Dominion Legislature", and for "Governor General in Council" substitute "Central Government".

In sub-section (2) for "Governor-General in Council" substitute "Dominion".

- Section 4. For "both Houses of Parliament" substitute "the Dominion Legislature".
- i. After section 4 insert the following:—
- "4A. Powers of the Dominion Legislature to be powers of the Constituent Assembly:—*
- The powers of the Dominion Legislature under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly".
3. Omit sub-section (1).

46

THE JOINT DEFENCE COUNCIL ORDER, AUGUST 11, 1947

In exercise of the powers conferred by sub-section (1) of section 9 of the Indian Independence Act, 1947, and in pursuance of sub-section (1) of section 11 thereof, the Governor-General is pleased to make the following Order:

1. (1) This Order may be cited as the Joint Defence Council Order 1947.

(2) It shall come into force at once.

(3) It shall cease to have effect on the first day of April, 1948:

Provided that the Governor-General of India and the Governor-General of Pakistan, acting jointly, may direct that this Order shall remain in force for such further period as may be specified in the direction.

2. (1) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order,

'Indian forces' has the same meaning as in the Indian Independence Act, 1947;

'Dominion forces' means the armed forces of the Dominion of India or Pakistan.



## THE JOINT DEFENCE COUNCIL ORDER

3. (1) As from the 15th day of August, 1947, there shall be set up a Council to be known as the Joint Defence Council for India and Pakistan.

(2) The said Council, hereinafter referred to as the Joint Defence Council, shall consist of

- (i) the Governor-General of India,
- (ii) the Defence Minister of India,
- (iii) the Defence Minister of Pakistan, and
- (iv) the Supreme Commander of His Majesty's Forces in India and Pakistan (hereinafter referred to as the Supreme Commander).

4. The Governor-General of India shall be the independent Chairman of the Joint Defence Council.

5. The person who at the date of the commencement of this Order is the Commander-in-Chief of His Majesty's Forces in India shall be the Supreme Commander.

6. (1) If a Defence Minister is for any reason unable to attend any meeting of the Joint Defence Council, he shall be entitled to depute another Minister or the High Commissioner for the Dominion concerned to attend the meeting in his place, and such other Minister or High Commissioner shall have for the purposes of that meeting all the powers of the Defence Minister.

(2) If the Supreme Commander is for any reason unable to attend any meeting of the Joint Defence Council, he shall be entitled to depute a member of his 'Chiefs of Staff' Committee to attend the meeting in his place, and such member shall have for the purposes of that meeting all the powers of the Supreme Commander.

7. At any meeting of the Joint Defence Council,

- (a) a Defence Minister may be accompanied by another Minister;
- (b) a Defence Minister or the Supreme Commander may call in to assist him at the meeting in an advisory capacity one or more experts.

8. The Joint Defence Council shall be in exclusive control of

- (a) the division of the Indian forces between the Dominions and their reconstitution as two separate Dominion forces;
- (b) the allocation, transfer and movement of officers and men belonging to the Indian forces for the purposes of such reconstitution;

- (c) the allocation, transfer and movement for the purposes of such reconstitution of plant, machinery, equipment and stores held by the Governor-General in Council immediately before the 15th day of August, 1947, for the purposes of the Indian forces;
- (d) such naval, military and air force establishments as the Joint Defence Council may specify, for such temporary period as that Council may consider necessary or expedient;
- (e) the general administration of naval, military and air force law and the maintenance of discipline in the armed forces of each of the two Dominions;
- (f) the general arrangements for the payment, food, clothing, medical attendance and equipment of the armed forces of each of the two Dominions;
- (g) any armed force which may be operating, or may hereafter be sent to operate, under joint command in such areas near the boundaries between the two Dominions as are for the time being declared by or under a Provincial law to be disturbed areas;
- (h) any Indian forces which are for the time being overseas: Provided that the control of the Joint Defence Council shall not extend,
  - (i) except in relation to the forces mentioned in paragraphs (g) and (h) of this Article, to the disposition and operational control within the Dominion, and the local administration, of the armed forces of either Dominion, or
  - (ii) to the selection and recruitment of officers and men for the armed forces of either Dominion and their training, when such training takes place elsewhere than in a training establishment specified by the Joint Defence Council under paragraph (d) of this Article:

Provided further that the Joint Defence Council shall cause such measures to be taken as will enable them gradually to withdraw their control in respect of all or any of the matters mentioned in paragraphs (d) (e) and (f) of this Article with a view to the cessation of control as early as may be practicable and in any event before the 1st day of April, 1948.

9. The executive authority of each of the two Dominions shall be so exercised as to give full effect to any orders or directions that

## THE JOINT DEFENCE COUNCIL ORDER

may be made or given by the Joint Defence Council in the exercise of the powers conferred on them by this Order.

10. The Supreme Commander shall be responsible for giving effect to the decisions of the Joint Defence Council and shall act in conformity with such directions as may be given to him in that behalf by the Joint Defence Council.

11. The posting and promotion of any officer of His Majesty's forces who is not a member of, but is attached to or serving with, any of the Dominion forces, shall be made only in consultation with the Supreme Commander.

12. Where by virtue of the provisions of this Order any members of the Indian Forces are for the time being subject to the command or control of the Supreme Commander, the Supreme Commander shall exercise

- (a) in the case of such members as are subject to the Indian Army Act, 1911, the powers of the Commander-in-Chief under that Act, and;
- (b) in the case of such members as are subject to the Indian Air Force Act, 1932, the powers of the Air Officer Commanding-in-Chief under that Act; and
- (c) when any such powers are so exercised by the Supreme Commander, the powers of the Central Government under the Indian Army Act, 1911, or as the case may be, the Indian Air Force Act, 1932, shall be exercisable by the Joint Defence Council.

13. There shall be two Joint Secretaries of the Joint Defence Council nominated, respectively, by the Governor-General of India and the Governor-General of Pakistan, and such other secretarial staff as may be appointed by or under the authority of the Joint Defence Council.

14. There shall be set up by order of the Joint Defence Council a financial and accounting organization charged with the duty of scrutinizing and advising on proposals involving expenditure, giving financial sanction thereto and accounting for all the expenses referred to in the next succeeding Article.

15. All expenses incurred by or under authority derived from the Joint Defence Council or the Supreme Commander for carrying into effect the purposes of this Order shall be borne by the Dominions of India and Pakistan in such proportion as may be determined by the Joint Defence Council.

THE INDIAN INDEPENDENCE (PARTITION COUNCILS)  
ORDER, AUGUST 12, 1947

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order:

1. (1) This Order may be cited as the Indian Independence (Partition Councils) Order, 1947.

(2) It shall come into force at once.

2. The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. As from the fifteenth day of August, 1947, there shall be set up in the manner hereinafter provided 4 bodies to be known respectively as

- (i) the Partition Council for India and Pakistan,
- (ii) the Bengal Separation Council,
- (iii) the Punjab Partition Committee, and
- (iv) the Assam Separation Council.

4. (1) the Partition Council for India and Pakistan shall consist of

- (a) two representatives of India who shall be Ministers of the Government of India, and
- (b) two representatives of Pakistan, one of whom shall be a Minister of the Government of Pakistan and the other shall be either another such Minister or the High Commissioner for Pakistan in India.

(2) The meetings of the Partition Council shall be held alternately under the Chairmanship of one of the said representatives of India or one of the said representatives of Pakistan.

(3) The High Commissioner for Pakistan in India shall be entitled to attend as an observer any of the meetings of the Partition Council at which Pakistan is represented by two Ministers.

5. (1) The Bengal Separation Council shall consist of two representatives of East Bengal and two representatives of West Bengal.

(2) The Punjab Partition Committee shall consist of two representatives of West Punjab and two representatives of East Punjab.

(3) The Assam Separation Council shall consist of two representatives of East Bengal and two representatives of Assam.

(4) The said representatives shall be such persons as may be nominated by the Governor of the Province concerned, and different persons may be nominated for different meetings of the Council or Committee, as the case may be.

6. The meetings of each of the bodies mentioned in Article 5 shall be held:

- (a) alternately in the capital towns of the two Provinces represented on that body, and
- (b) under the chairmanship of the Governor of the Province in which the meeting is so held.

For the purposes of this Article a series of meetings held in one place from day to day shall be deemed to be a single meeting.

7. It shall be the duty of each of the bodies mentioned in Article 3:

- (a) to consider all questions relating to such of the matters mentioned in Article 4 of the Arbitral Tribunal Order 1947, as are the concern of that body, and attempt to reach an agreed decision on all such questions;
- (b) in the event of their failure to reach an agreed decision on any such question as aforesaid, to make a reference in accordance with the provisions of the said Order to the Arbitral Tribunal set up by that Order; and
- (c) to consider any other question of common concern to the Dominions of India and Pakistan or, as the case may be, to the respective Provinces, arising in connection with the transition to the Provisions of the Indian Independence Act, 1947.

3. (1) As from the appointed day,<sup>1</sup> the Government of India Act, 1935, including the provisions of that Act which have not come

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1. August 15, 1947—Editor.

into force before the appointed day, and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and modifications directed in the following provisions of this paragraph and in the Schedule to this order.

(2) The following expressions shall be omitted wherever they occur, namely, "in his discretion", "acting in his discretion" and "exercising his individual judgement."

\* \* \* \*

### The Schedule

#### THE GOVERNMENT OF INDIA ACT, 1935

Section 2. Omit.

Section 3. For this section substitute: "3. The Governor-General.—The Governor-General of India is appointed by a Commission under the Royal Sign Manual."

Section 4. Omit.

Section 6. For this section substitute: "6. Accession of Indian States.—(1) An Indian State shall be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State: (a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion exercise in relation to the State such function as may be vested in them by order under this Act; and (b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession...."

\* \* \* \*

Section 9. For this section substitute: "9. Council of ministers.—There shall be a Council of ministers to aid and advise the Governor-General in the exercise of his functions."

Sections 11-15. Omit.

\* \* \* \*

Section 18. For this section substitute: "18. Constitution of the Dominion Legislature.—The powers of the Dominion Legisla-

ture under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly....”

Section 42. For this section substitute: “42. Power of Governor-General to promulgate ordinances in cases of emergency.—The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of the Dominion or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Dominion Legislature, but the power of making Ordinances under this section is subject to the like restrictions as the power of the Dominion Legislature under this Act to make laws; and any Ordinance made under this section may be controlled or superseded by any such Act”.

Sections 43-45. Omit.

\* \* \* \*

Section 47. For this section substitute: “47. Provisions as to Berar.—Berar shall continue to be governed together with the Central Provinces as one Governor’s Province under this Act by the name of the Central Provinces and Berar and in the same manner as immediately before the establishment of the Dominion; and any references in this Act to the Dominion of India shall be construed as including a reference to Berar.”

Section 50. For this section substitute: “50. Council of Ministers.—There shall be a council of ministers to aid and advise the Governor in the exercise of his functions.”

Section 51. Omit sub-section 5.

Sections 52-54. Omit.

\* \* \*

Sections 56-58. Omit.

Section 74. In sub-section (2) omit “or affects the discharge of any of his special responsibilities” and the last sentence.

Section 76. In sub-section (1) omit “or that he reserves the Bill for the signification of His Majesty’s pleasure thereon.” Omit sub-section (2).

Section 77. Omit.

\* \* \* \*

Section 88. For the proviso to sub-section (1) substitute: “Provided that the Governor shall not, without instructions from the Governor-General, promulgate any such Ordinance if an Act of the

Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General, it had received assent of the Governor-General."

In sub-section (2) omit paragraph (b).

Sections 89 and 90. Omit.

Section 91. For this section substitute: "91. Excluded areas and partially excluded areas.—In this Act, the expressions "excluded area" and "partially excluded area" mean respectively such areas as were excluded or partially excluded areas immediately before the establishment of the Dominion.

\* \* \* \*

Section 93. Omit.

\* \* \* \*

Section 96. For this section substitute: "96. The Andaman and Nicobar Islands.—The Governor-General may make regulations for the peace and good government of the Andaman and Nicobar Islands, and any regulations so made may repeal or amend any Act of the Dominion Legislature or any existing law which is for the time being applicable to the Province, and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Dominion Legislature which applies to the Province."

Section 97. For "His Majesty in Council" substitute "or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947."

Section 98. Omit.

Section 99. In sub-section (1) for "for the whole or any part of British India or for any Federated State" substitute "(including laws having extra-territorial operation) for the whole or any part of the Dominion."

Omit sub-section (2).

\* \* \* \*

Section 102. For sub-section (3) substitute: "(3). A Proclamation of Emergency may be revoked by a subsequent proclamation."

Section 104. Omit sub-section (2).

\* \* \* \*

Section 107. In sub-section (2) omit "or for the signification of His Majesty's pleasure", and "or of His Majesty."



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Section 108. Omit.

\* \* \* \*

Sections 110-121. Omit.

Section 123. Omit.

Section 126. In the proviso to sub-section (2) omit "either Chamber of."

Omit sub-section (4).

In sub-section (5) for the words from "without prejudice" to "governor of" substitute "The Executive Authority of the Dominion shall also extend to the giving of directions to".

\* \* \* \*

Section 142. For "His Majesty in Council" substitute "Order of the Governor-General", for "His Majesty" substitute "the Governor-General", and omit the proviso.

Section 143. After sub-section (1) insert: "(A). Nothing in the foregoing provisions of this chapter authorises the levy of any duty or tax by the Dominion in any acceding State unless provision in that behalf is made in the Instrument of Accession of that State."

Sections 145-149. Omit.

\* \* \*

Section 152. Omit.

\* \* \*

Sections 157-161. Omit.

\* \* \*

Sections 179-199. Omit.

Section 200. In sub-section (1) for "as His Majesty" substitute "as the Governor-General" and for "an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for" substitute "a resolution is passed by the Dominion Legislature approving".

In sub-section (2) for "His Majesty by warrant under the Royal Sign Manual" substitute "order of the Governor-General" and in paragraph (b) of the proviso omit "by His Majesty" where those words occur for the second time.

Section 219. Add the following sub-section: "(3). In this Chapter 'India' means the territories comprised in the Governor's Provinces, and does not include any Acceding State."

Sections 232-239. Omit.

\* \* \* \*

Sections 248-252. Omit.

\* \* \* \*

Sections 278-289. Omit.

Section 290. In sub-section (1) for "His Majesty may by Order-in-Council" substitute "the Governor-General may by order" and for the words from "before the draft" to "Chamber or Chambers of the Legislature" substitute "before making any such order the Governor-General shall ascertain the views of the Government."

For sub-section (2) substitute: "(2). An Order made under this sub-section may contain such provisions as the Governor-General may deem necessary or proper—(a) for varying the representation in the Dominion Legislature of any Governor's Province the boundaries of which are altered by the Order; (b) for varying the composition of Legislature of any such province; (c) where a new Governor's Province is created, for constituting the Legislature thereof; (d) for other supplemental, incidental and consequential matters".

Sections 307-310. Omit.

\* \* \* \*

Sections 312-320. Omit.

First Schedule. Omit.

Second Schedule. Omit.

\* \* \* \*

Seventh Schedule. In List 1, for entry I substitute:—

"1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion; and armed forces which are not forces of the Dominion but are attached to or operating with any of the armed forces of the Dominion: Central Intelligence Bureau; preventive detention for reasons of State connected with Defence or External Affairs";

(In List 1) in entry 2 omit "(not being cantonment areas of Indian State troops)", and omit "within British India";

(In List 1) in entry 9, for "Federal" substitute "Dominion";

(In List 1) in entry 17, after "domiciled in India" insert "or" and omit "or British subjects domiciled in the United Kingdom";

(In List 1) in entries 34 and 36, for "Federal Control" substitute "Dominion Control";

(In List 1) for entry 39 substitute; "39. Extension of the powers and jurisdiction of members of a police force belonging to any province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another

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province without the consent of the Government of that Province; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."

In this entry "Province" includes "a Chief Commission's Province";

(In list 1) in entry 40, omit "and of any Order-in-Council made thereunder";

(In List 1) in entry 41, for the words from "Federal Minister" to "Federal Assembly" substitute "Dominion Ministers and of the President and Deputy President of the Dominion Legislature", and omit "to such extent as is expressly authorised by Part II of this Act".

In List II—in entry 11, omit "and of any Order-in-Council made thereunder";

(In List II) in entries 23 and 29, for "Federal" substitute "Dominion".

In Entry 34 of List III for "Federal" substitute "Dominion".

Eighth Schedule. Omit.

Ninth Schedule. Omit.

## PART EIGHT

49

### PROCEEDINGS OF THE CONSTITUENT ASSEMBLY OF INDIA THURSDAY, AUGUST 14, 1947

The Fifth Session of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

(i)

#### *Singing of Vande Mataram*

Mr. President: The first item on the Agenda is the singing of the first verse of VANDE MATARAM. We will listen to it all standing.

Shrimati Sucheta Kripalani (U.P.: General) sang the first verse of the VANDE MATARAM song.

(ii)

#### *President's Address<sup>1</sup>*

In this solemn hour of our history when, after many years of struggle, we are taking over the governance of this country, let us offer our humble thanks to the Almighty Power that shapes the destinies of men and nations and let us recall in grateful remembrance the services and sacrifices of all those men and women, known and unknown, who with smiles on their faces walked on the gallows or faced bullets on their chests, who experienced living death in the cells of the Andamans or spent long years in the prisons of India, who preferred voluntary exile in foreign countries to a life of humiliation in their own, who not only lost wealth and property but cut themselves off from near and dear ones to devote themselves to the achievement of the great objective which we are witnessing today.

Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher during the last thirty years or more. He represents that undying

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1. C.A. D. Vol. V, pp. 1-3.

spirit in our culture and make-up, which has kept India alive through the vicissitudes of our history. He it is who pulled us out of the slough of despond and despair and blew into us a spirit which enabled us to stand up for justice, to claim our birthright of freedom and placed in our hands the matchless and unfailing weapon of Truth and Non-violence which without arms and armaments has won for us the invaluable prize of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population. We were indifferent instruments that he had to work with but he led us with consummate skill, with unwavering determination, with an undying faith in our future, with faith in his weapon and above all with faith in God. Let us prove true to that faith. Let us hope that India will not, in the hour of her triumph, give up or minimise the value of the weapon which served not only to rouse and inspire her in her moments of depression but has also proved its efficacy. India has a great part to play in the shaping and moulding of the future of a war-distracted world. She can play that part, not by mimicking, from a distance, what others are doing, or by joining in the race for armaments and competing with others in the discovery of the latest and most effective instruments of destruction. She has now the opportunity, and, let us hope, she will have the courage and strength to place before the world for its acceptance her infallible substitute for war and bloodshed, death and destruction. The world needs it and will welcome it, unless it is prepared to reel back into barbarism from which it boasts to have emerged.

Let us then assure all countries of the world that we propose to stick to our historic tradition to be on terms of friendship and amity with all, that we have no designs against any one and hope that none will have any against us. We have only one ambition and desire, that is, to make our contribution to the building up of freedom for all and peace among mankind.

The country, which was made by God and Nature to be one, stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow at this separation. But I wish to send on your behalf and my own our greetings and good wishes for success and the best of luck in the high endeavour of government in which the people of Pakistan, which till today has been a part and parcel of ourselves, will be engaged. To those who feel like us but are on the other side of the border we send a word of cheer. They should

not give way to panic but should stick to their hearths and homes, their religion and culture, and cultivate the qualities of courage and forbearance. They have no reason to fear that they will not get protection and just and fair treatment, and they should not become victims of doubt and suspicion. They must accept the assurances publicly given and win their rightful place in the polity of the State, where they are placed, by their loyalty.

To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and to its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and disease; to abolish distinction and exploitation and to ensure decent living.

We are embarking on a great task. We hope that in this we shall have the unstinted service and co-operation of all our people and the sympathy and support of all the communities. We shall do our best to deserve it.

Mr. President: After this I propose that we all stand in silence to the honour the memory of those who have died in the struggle for freedom, in India and elsewhere.

(The Assembly stood in silence for two minutes.)

(iii)

### *Motion of Pledge<sup>1</sup>*

The Honourable Pandit Jawaharlal Nehru (*U.P.—General*): Mr. President, many years ago we had made a tryst with destiny itself. We had taken a pledge, a vow. Now the time has come to redeem it. But perhaps the pledge has not yet been redeemed fully though stages have been reached in that direction. We have almost attained independence. At such a moment it is only appropriate that we take a new pledge, a new vow to serve India and her people. After a few moments, the Assembly will assume the status of a fully free and independent body, and it will represent an independent and free country. Therefore great responsibilities are to devolve upon it. If we do not realise the importance of our responsibilities, then we shall not be able to discharge our duties fully. Hence it becomes essential for us to take this pledge after fully understanding all its implications. The resolution that I am presenting before you relates to that pledge. We have finished one phase,

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1. C.A. D. Vol. V, No. 1, pp. 3-5.

and for that rejoicings are going on today. Our hearts are full of joy and some pride and satisfaction. But we know that there is no rejoicing in the whole of the country. There is enough of grief in our hearts. Not far from Delhi, big cities are ablaze and its heat is reaching us here. Our happiness cannot be complete. At this hour we have to face all these things with a brave heart. We are not to raise a hue and cry and get perturbed. When the reins of Government have come to our hands, we have to do things in the right way. Generally, countries wrest their freedom after great bloodshed, tears and toil. Much blood has been spilt in our land, and in a way which is very painful. Notwithstanding that, we have achieved freedom by peaceful methods. We have set a new example before the world. We are free now, but along with freedom come responsibilities and burdens. We have to face them, and overcome them all. Our dream is now about to be translated into reality. The task of wresting freedom and ousting the foreign Government was before us till now and that task is now accomplished. But uprooting the foreign domination is not all. Unless and until each and every Indian breathes the air of freedom and his miseries are banished and his hard lot is improved, our task remains unfinished. Therefore a large portion of our task remains to be done, and we shall try to accomplish it. Big problems confront us and at their sight sometimes our heart quivers, but, then again, the thought that in the past we have faced many a big problem and we shall do so again, gives us courage. Shall we be cowed down by these? It is not the individual pride and strength that is comforting, rather it is the pride of the country and the nation, and a confidence in people who have suffered terribly for the cause and makes me feel bold to think we shall successfully shoulder the huge burden of hardships, and find a solution of these problems. After all, India is now free. That is well and good. At a time when we are on the threshold of freedom, we should remember that India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. We have repeatedly defined the type of freedom we desire. In the first resolution, which I moved earlier, it has been said that our freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom. We shall proceed like that, and whosoever tries to be aggressive will be checked by us. If anyone is oppressed we shall stand by his side. If we follow this path, then we shall be able to solve big problems, but if we become narrow-minded we shall not be able to solve them.

(I shall read out in English this resolution which I am now putting before you.)\*

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

At the dawn of history India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her successes and her failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill-fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?

Freedom and power bring responsibility. That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless the past is over and it is the future that beckons to us now.

That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so often taken and the one we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

And so we have to labour and to work and work hard to give reality to our dreams. Those dreams are for India but they are also for the world, for all the nations and peoples are too closely knit together today for any one of them to imagine that it can live apart. Peace has been said to be indivisible; so is freedom, so is

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\* English translation of Hindustani speech.



prosperity now, and so also is disaster in this One World that can no longer be split into isolated fragments.

To the people of India, whose representatives we are, we make appeal to join us with faith and confidence in this great adventure. This is no time for petty and destructive criticism, no time for ill-will or blaming others. We have to build the noble mansion of free India where all her children may dwell.

I beg to move, Sir,

“That it be resolved that:

(1) After the last stroke of midnight, all members of the Constituent Assembly present on this occasion, do take the following pledge:

At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I....a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind.

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly.” (*Loud applause.*)

(iv)

Dr. S. Radhakrishnan (*United Provinces: General*):<sup>1</sup> Mr. President, Sir, it is not necessary for me to speak at any great length on this Resolution so impressively moved by Pandit Jawaharlal Nehru and seconded by Mr. Khaliquzzaman. History and legend will grow round this day. It marks a milestone in the march of our democracy. A significant date it is in the drama of the Indian people who are trying to rebuild and transform themselves. Through a long night of waiting, a night full of fateful portents and silent prayers for the dawn of freedom, of haunting spectres of hunger and death, our sentinels kept watch, the lights were burning bright till at last the dawn is breaking and we greet it with the utmost enthusiasm. When we are passing from a state of serfdom, a state of slavery and subjection to one of freedom and liberation, it is an occasion for rejoicing. That it is being effected in such an orderly and dignified way is matter for gratification.

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1. C.A. D. Vol. V, pp. 6-9.

Mr. Attlee spoke with visible pride in the House of Commons when he said that this is the first great instance of a strong Imperialist power transferring its authority to a subject people whom it ruled with force and firmness for nearly two centuries. For a parallel he cited the British withdrawal from South Africa; but it is nothing comparable in scale and circumstances to the British withdrawal from this country. When we see what the Dutch are doing in Indonesia, when we see how the French are clinging to their possession, we cannot but admire the political sagacity and courage of the British people. (*Cheers*)

We, on our side, have also added a chapter to the history of the world. Look at the way in which subject peoples in history won their freedom. Let us also consider the methods by which power was acquired. How did men like Washington, Napoleon, Cromwell, Lenin, Hitler and Mussolini get into power? Look at the methods of blood and steel, of terrorism and assassination, of bloodshed and anarchy by which these so-called great men of the world came into the possession of power. Here in this land under the leadership of one who will go down in history as perhaps the greatest man of our age (*loud cheers*), we have opposed patience to fury, quietness of spirit to bureaucratic tyranny and are acquiring power through peaceful and civilised methods. What is the result? The transition is being effected with the least bitterness, with utterly no kind of hatred at all. The very fact that we are appointing Lord Mountbatten as the Governor-General of India, shows the spirit of understanding and friendliness in which this whole transition is being effected. (*Cheers*)

You, Mr. President, referred to the sadness in our hearts, to the sorrow which also clouds our rejoicing. May I say that we are in an essential sense responsible for it also, though not entirely? From 1600, Englishmen have come to this country—priests and nuns, merchants and adventurers, diplomats and statesmen, missionaries and idealists. They bought and sold, marched and fought, plotted and profited, helped and healed. The greatest among them wished to modernise the country, to raise its intellectual and moral standards, its political status. They wished to regenerate the whole people. But the small among them worked with sinister objectives. They tried to increase the disunion in the country, made the country poorer, weaker and more disunited. They also have had their chance now. The freedom we are attaining is the fulfilment of this dual tendency among British administrators. While India is attaining freedom, she is attaining it in a manner which does not produce joy in the hearts of people or a radiant smile on their faces. Some of those who were charged with the responsibility for the

administration of this country, tried to accentuate communal consciousness and bring about the present result which is a logical outcome of the policies adopted by the lesser minds of Britain. But I would never blame them. Were we not victims, ready victims, so to say, of the separatist tendencies foisted on us? Should we not now correct our national faults of character, our domestic despotism, our intolerance which has assumed the different forms of obscurantism, of narrow-mindedness, of superstitious bigotry? Others were able to play on our weaknesses because we had them. I would like therefore to take this opportunity to call for self-examination, for a searching of hearts. We have gained but we have not gained in the manner we wished to gain and if we have not done so, the responsibility is our own. And when this pledge says that we have to serve our country, we can best serve our country by removing these fundamental defects which have prevented us from gaining the objective of a free and united India. Now that India is divided, it is our duty not to indulge in words of anger. They lead us nowhere. We must avoid passion. Passion and wisdom never go together. The body politic may be divided but the body historic lives on. (*Hear, hear.*) Political divisions, physical partitions, are external but the psychological divisions are deeper. The cultural cleavages are the more dangerous. We should not allow them to grow. What we should do is to preserve those cultural ties, those spiritual bonds which knit our peoples together into one organic whole.

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Our pledge tells us that this ancient land shall attain her rightful and honoured place. We take pride in the antiquity of this land for it is a land which has seen nearly four or five millenniums of history. It has passed through many vicissitudes and at the moment it stands, still responding to the thrill of the same great ideal. Civilisation is a thing of the spirit, it is not something external, solid and mechanical. It is the dream in the peoples' hearts. It is the inward aspiration of the peoples' souls. It is the imaginative interpretation of the human life and the perception of the mystery of human existence. That is what civilisation actually stands for. We should bear in mind these great ideals which have been transmitted to us across the ages. In this great time of our history we should bear ourselves humbly before God, brace ourselves to this supreme task which is confronting us and conduct ourselves in a manner that is worthy of the ageless spirit of India. If we do so, I have no doubt that the future of this land will be as great as its once glorious past. *Sarvabhūtadisāhamātmānam Sarvabhūtāni cātmani Sampasyam ātmayājivai Swārājyam adhigachati*: Swarajya is the development

of that kind of tolerant attitude which sees in brother man the face Divine. Intolerance has been the greatest enemy of our progress. Tolerance of one another's views, thoughts and beliefs is the only remedy that we can possibly adopt. Therefore, I support with very great pleasure this Resolution which asks us as the representatives of the people of India to conduct ourselves in all humility in the service of our country and the word "Humility" here means that we are by ourselves very insignificant. Our efforts by themselves cannot carry us to a long distance. We should make ourselves dependent on that other than ourselves which makes for righteousness. The note of humility means the unimportance of the individual and the supreme importance of the unfolding purpose which we are called upon to serve. So in a mood of humility, in a spirit of dedication let us take this pledge as soon as the clock strikes 12.

(v)

*The Pledge<sup>1</sup>*

Mr. President: I will now put the Resolution to the vote. I shall read it first:—

"Resolved that—

(1) After the last stroke of midnight, all members of the Constituent Assembly present on the occasion do take the following pledge—

'At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom and become masters of their own destiny, I, . . . . ., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;'

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly."

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, there are two amendments standing in my name, but since you have invoked the holy name of God in your address and incorporated the spirit of it in the pledge by modifying it slightly in the form in which it has come before us, and above all, since the zero hour is fast approaching, I do not propose to move my amendments.

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1. C.A. D. Vol. V, No. 1, 14-8-1947, pp. 9-11.

Mr. President: Thank you. I will put the Resolution to vote. Members will please express their assent by saying 'Aye'.

The motion was adopted.

Mr. President: We have just resolved that as the clock strikes 12, we shall take the pledge. In taking the pledge, I shall read it out sentence by sentence in our own language first and I shall expect those members who know that language to repeat it sentence by sentence. Then I will read it out also sentence by sentence in English and I shall expect the members to repeat it sentence by sentence. Members will please stand when the pledge is taken, but other visitors will remain seated. It is just half a minute to 12. I am expecting the clock to strike 12.

As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge as below, Mr. President reading it out sentence by sentence and the Members repeating it after him in Hindustani and in English.

"At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I, . . . . ., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind."

(vi)

*Intimation to the Viceroy about the Assumption of Power by the Constituent Assembly and the Assembly's Endorsement of Lord Mountbatten's Appointment as Governor-General of India*

Mr. President: I propose that it should be intimated to the Viceroy that—

- (1) the Constituent Assembly of India has assumed power for the governance of India, and
- (2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be Governor-General of India from the 15th August 1947

and that this message be conveyed forthwith to Lord Mountbatten by the President and Pandit Jawaharlal Nehru. (*Cheers*) I take it the House approves it.

The motion was adopted.

(vii)

*Presentation of the National Flag<sup>1</sup>*

Mr. President: Shrimati Hansa Mehta will now present the National Flag on behalf of the Women of India. (*Cheers*)

Mrs. Hansa Mehta: (*Bombay: General*): Mr. President, Sir, in the absence of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women of India, to present this flag to the Nation through you.

I have a list here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from the women of India. (*Cheers*) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the freedom that we have attained. We have great traditions to maintain, traditions that made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the gloom that threatens the world today. May it bring happiness to those who live under its protecting care. (*Cheers*)

(viii)

*Singing of National Songs<sup>2</sup>*

Mr. President: The next item is the singing of the first few lines of *Sare Jahan Se Achha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He*.

(Shrimati Sucheta Kripalani sang the first few lines of *Sare Jahan Se Achha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He*.)

Mr. President: The House will now adjourn for a few hours, till Ten of the Clock.

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1. C.A. D. Vol. V, p. 10.

2. C.A.D. Vol. V, p. 11.

The Assembly then adjourned till Ten of the Clock on Friday, the 15th August 1947.

50

PROCEEDINGS OF THE CONSTITUENT ASSEMBLY OF INDIA,  
FRIDAY, AUGUST 15, 1947<sup>1</sup>

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) entered the Hall along with their Excellencies Lord Mountbatten, Governor-General of India, and Lady Mountbatten.

(i)

*Messages*

Mr. President: I shall read out certain messages which have been received.

1 *Message from the Prime Minister of the United Kingdom.*

My colleagues in the United Kingdom Government join with me in sending on this historic day greetings and good wishes to the Government and the people of India. It is our earnest wish that India may go forward in tranquillity and prosperity and in so doing contribute to the peace and prosperity of the world.

2 *Message from His Grace the Archbishop of Canterbury.*

At this time when India and Pakistan become independent Dominions and take upon themselves the full responsibilities of self-Government, on behalf of the Christian people of this country, I send you my greetings and good wishes. In God's providence apparently insuperable difficulties have so far been overcome and all the travail of past ages had led up to this moment of fulfilment and hope. I pray that the two Dominions may go forward to a noble future ever growing in justice and peace, in brotherhood and prosperity.

3 *Message from Generalissimo Chiang Kai-shek, President of the Republic of China.*

On this auspicious occasion when the people of India celebrate the dawn of a new era of freedom, I wish to convey to you and

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1. C.A.D. Vol. V, No. 2, pp. 13-15.

the people of India my warm congratulations on the glorious and monumental achievement in which you and Mahatma Gandhi have played such an eminent and noble part, and which, I am confident, will be a source of inspiration to all peoples striving for independence, equality and progress. Please accept my best wishes for India's bright and promising future of success and greatness.

4 *Message from the Prime Minister of Canada.*

It affords me much pleasure to extend to you, and through you to the Government and people of India, the most cordial wishes of the Government and people of Canada on the occasion of the establishment of India as a completely self-governing nation.

5 *Message from the Prime Minister of Australia.*

I desire to convey the greetings and good wishes of the Government and people of Australia to the Government and people of India on the historic occasion which is being celebrated on the 15th August.

The Australian people rejoice in your new status as a free and sovereign nation and warmly welcome your fellow membership in the British Commonwealth of Nations.

It is confidently anticipated that your traditions, your ancient culture and the spirit which is animating you in making smooth this period of transition, will ensure the future welfare and the greatness of the people of India.

6 *Message from the President of the Executive Yuan, Nanking.*

On this historic occasion of India's attainment of her long cherished aspirations I take special pleasure in extending to you and the Indian people my sincere felicitations. The Chinese people are deeply gratified by the rebirth of another great nation on the Asian continent. India and China with a common frontier of 2,000 miles have enjoyed the closest and most friendly relations in the course of many centuries. Our two nations having stood together through the late world war will undoubtedly continue to march forward together toward the common goal of world peace. I send you my warmest wishes for your continued success and for the happiness and prosperity of the Indian people.

7 *Message from Dr. Soedarsono on behalf of the Republic of Indonesia.*

On the eve of the establishment of the Dominion of India it is a great pleasure to the Republic of Indonesia to express her feelings of heartfelt joy, sympathy and friendship.



The Republic of Indonesia looks upon India as her Comrade who in time of danger and distress has helped her and will always help her. She may—as both their nationalism is based upon humanity—hope that in the very near future still tighter bonds will be welded, bonds of comradeship in the struggle for Justice and Peace and for the Freedom and Prosperity of millions who for so long a time have lived in squalor amidst luxury and wealth.

The people of India since years led by its eminent Leaders undoubtedly is approaching a better and happier future. India will not only become a land of Justice and Prosperity but at the same time a bulwark of and a guard for peace in Asia.

The Government and the People of the Republic of Indonesia send your People, your Government and your Excellency at this great historical moment their deeply felt wishes for Happiness and Prosperity.

8 *Message from His Majesty's Minister in Nepal.*

My staff join me in offering warmest congratulations on establishment of Dominion of India and send all good wishes for future happiness and prosperity of State and its people.

9 *Message from the Prime Minister and Acting Minister of Foreign Affairs, Oslo.*

On this Great Day of National Rejoicing for the Peoples of India I have the honour to transmit to you my very best wishes for the prosperity of your country.

10 *Message from the French Minister of Foreign Affairs.*

Mons. Georges Bidault, Minister for Foreign Affairs, Paris.  
To Pandit Jawaharlal Nehru,

In the name of my Government and in my own I salute the historic date which marks the final accession of India to the ranks of the World's great free nations devoted to the cause of peace and earnestly desirous of the prosperity of all the peoples of the world. I request Your Excellency to accept, on this occasion, the renewed assurances of my very high consideration and of my entire devotion to the cause of friendship between our two countries.

11 *Message from the President of the United States of America.*

American Embassy,  
New Delhi, India.  
August 15, 1947.

Your Excellency,

I have the honour to transmit to you the following message from the President of the United States:

On this memorable occasion I extend to you, to Prime Minister Jawaharlal Nehru and to the people of the Dominion of India the sincere best wishes of the Government and the people of the United States of America. We welcome India's new and enhanced status in the world community of sovereign independent nations, assure the new Dominion of our continued friendship and good will, and reaffirm our confidence that India, dedicated to the cause of peace and to the advancement of all peoples, will take its place at the forefront of the nations of the world in the struggle to fashion a world Society founded in mutual trust and respect. India faces many grave problems, but its resources are vast, and I am confident that its people and leadership are equal to the tasks ahead. In the years to come the people of this great new nation will find the United States a constant friend. I earnestly hope that our friendship will in the future, as in the past, continue to be expressed in close and fruitful co-operation in international undertakings and the cordiality in our relations one with the other.

I wish to avail myself of this opportunity of extending my personal congratulations to Your Excellency on your assumption of the post of Governor-General of the Dominion of India and at the same time to convey assurances of my highest consideration.

Henry T. Grady.

(ii)

*His Majesty's Message and the Address of H. E. The Governor-General<sup>1</sup>*

Mr. President: May I invite your Excellency to address the House?

H.E. the Governor-General: Mr. President and members of the Constituent Assembly,

I have a message from His Majesty the King to deliver to you today. This is His Majesty's message:—

‘On this historic day when India takes her place as a free and independent Dominion in the British Commonwealth of Nations, I send you all my greetings and heartfelt wishes.

Freedom-loving people everywhere will wish to share in your celebrations, for with this transfer of power by consent comes the fulfilment of a great democratic ideal to which the British and Indian peoples alike are firmly dedicated. It is inspiring to think that all this has been achieved by means of peaceful change.

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1. C.A. D. Vol. V, pp. 15-18.

Heavy responsibilities lie ahead of you, but when I consider the statesmanship you have already shown and the great sacrifices you have already made, I am confident that you will be worthy of your destiny.

I pray that the blessings of the Almighty may rest upon you and that your leaders may continue to be guided with wisdom in the tasks before them. May the blessings of friendship, tolerance and peace inspire you in your relations with the nations of the world. Be assured always of my sympathy in all your efforts to promote the prosperity of your people and the general welfare of mankind.'

It is barely six months ago that Mr. Attlee invited me to accept the appointment of last Viceroy. He made it clear that this would be no easy task—since His Majesty's Government in the United Kingdom had decided to transfer power to Indian hands by June 1948. At that time it seemed to many that His Majesty's Government had set a date far too early. How could this tremendous operation be completed in fifteen months?

However, I had not been more than a week in India before I realised that this date of June 1948 for the transfer of power was too late rather than too early; communal tension and rioting had assumed proportions of which I had had no conception when I left England. It seemed to me that a decision had to be taken at the earliest possible moment unless there was to be risk of a general conflagration throughout the whole sub-continent.

I entered into discussions with the leaders of all the parties at once—and the result was the plan of June 3rd. Its acceptance has been hailed as an example of fine statemanship throughout the world. The plan was evolved at every stage by a process of open diplomacy with the leaders. Its success is chiefly attributable to them.

I believe that this system of open diplomacy was the only one suited to the situation in which the problems were so complex and the tension so high. I would here pay tribute to the wisdom, tolerance and friendly help of the leaders which have enabled the transfer of power to take place ten and a half months earlier than originally intended.

At the very meeting at which the plan of June 3rd was accepted, the Leaders agreed to discuss a paper which I had laid before them on the administrative consequences of partition; and then and there we set up the machinery which was to carry out one of the greatest administrative operations in history—the partition of a sub-continent of 400 million inhabitants and the transfer of power to

two independent Governments in less than two and a half months. My reason for hastening these processes was that, once the principle of division had been accepted, it was in the interest of all parties that it should be carried out with the utmost speed. We set a pace faster in fact than many at the time thought possible. To the Ministers and officials who have laboured day and night to produce this astonishing result, the greatest credit is due.

I know well that the rejoicing which the advent of freedom brings is tempered in your hearts by the sadness that it could not come to a united India; and that the pain of division has shorn to-day's events of some of its joy. In supporting your leaders in the difficult decision which they had to take, you have displayed as much magnanimity and realism as have those patriotic statesmen themselves.

These statesmen have placed me in their debt for ever by their sympathetic understanding of my position. They did not, for example, press their original request that I should be the Chairman of the Arbitral Tribunal. Again they agreed from the outset to release me from any responsibility whatsoever for the partition of the Punjab and Bengal. It was they who selected the personnel of the Boundary Commissions including the Chairman; it was they who drew up the terms of reference, it is they who shoulder the responsibility for implementing the award. You will appreciate that had they not done this, I would have been placed in an impossible position.

Let me now pass to the Indian States. The plan of June 3rd dealt almost exclusively with the problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognised that on the transfer of power, all the Indian States—565 of them—would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department it was possible for me, as Crown Representative, to tackle this great question. Thanks to that far-sighted statesman, Sardar Vallabhbhai Patel, Member in charge of States Department, a scheme was produced which appeared to me to be equally in the interests of the States as of the Dominion of India. The overwhelming majority of States are geographically linked with India, and therefore this Dominion had by far the bigger stake in the solution of this problem. It is a great triumph for the realism and sense of responsibility of the Rulers and Governments of the States, as well as of the Government of India, that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one moreover, so simple

and so straightforward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300 million people and the major part of this great sub-continent.

The only State of the first importance that has not yet acceded is the premier state, Hyderabad.

Hyderabad occupies a unique position in view of its size, population and resources, and it has its special problems. The Nizam, while he does not propose to accede to the Dominion of Pakistan, has not up to the present felt able to accede to the Dominion of India. His Exalted Highness has, however, assured me of his wish to co-operate in the three essential subjects of External Affairs, Defence and Communications with that Dominion whose territories surround his State. With the assent of the Government, negotiations will be continued with the Nizam and I am hopeful that we shall reach a solution satisfactory to all.

From today I am your constitutional Governor-General and I would ask you to regard me as one of yourselves, devoted wholly to the furtherance of India's interests. I am honoured that you have endorsed the invitation originally made to me by your leaders to remain as your Governor-General. The only consideration I had in mind in accepting was that I might continue to be of some help to you in the difficult days which lie immediately ahead. When discussing the Draft of the Indian Independence Act your leaders selected the 31st March 1948 as the end of what may be called the interim period. I propose to ask to be released in April. It is not that I fail to appreciate the honour of being invited to stay on in your service, but I feel that as soon as possible India should be at liberty, if you so wish, to have one of her own people as her Governor-General. Until then my wife and I will consider it a privilege to continue to work with and amongst you. No words can express our gratitude for the understanding and co-operation as well as the true sympathy and generosity of spirit which have been shown to us at all times.

I am glad to announce that "my" Government (as I am now constitutionally entitled and most proud to call them) have decided to mark this historic occasion by a generous programme of amnesty.

The categories are as wide as could be consistent with the overriding consideration of public morality and safety, and special account has been taken of political motives. This policy will also govern the release of military prisoners undergoing sentences as a result of trial by courts-martial.

The tasks before you are heavy. The war ended two years ago. In fact, it was on this very day two years ago that I was with that great friend of India, Mr. Attlee, in his Cabinet Room when the news came through that Japan had surrendered. That was a moment for thankfulness and rejoicing, for it marked the end of six bitter years of destruction and slaughter. But in India we have achieved something greater—what has been well described as “A treaty of Peace without a War.” Nevertheless, the ravages of the war are still apparent all over the world. India, which played such a valiant part, as I can personally testify from my experience in South-East Asia, has also had to pay her price in the dislocation of her economy and the casualties to her gallant fighting men with whom I was so proud to be associated. Preoccupations with the political problem retarded recovery. It is for you to ensure the happiness and ever-increasing prosperity of the people, to provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy. The solution of these problems requires immediate and whole-hearted effort and far-sighted planning, but I feel confident that with your resources in men, material and leadership you will prove equal to the task.

What is happening in India is of far more than purely national interest. The emergence of a stable and prosperous state will be a factor of the greatest international importance for the peace of the world. Its social and economic development, as well as its strategic situation and its wealth of resources, invest with great significance the events that take place here. It is for this reason that not only Great Britain and the sister Dominions but all the great nations of the world will watch with sympathetic expectancy the fortunes of this country and will wish to it all prosperity and success.

At this historic moment, let us not forget all that India owes to Mahatma Gandhi—the architect of her freedom through non-violence. We miss his presence here today, and would have him know how much he is in our thoughts.

Mr. President, I would like you and our other colleagues of the late Interim Government to know how deeply I have appreciated your unfailing support and co-operation.

In your first Prime Minister, Pandit Jawaharlal Nehru, you have a world-renowned leader of courage and vision. (*Cheers*) His trust and friendship have helped me beyond measure in my task. Under his able guidance, assisted by the colleagues whom he has selected, and with the loyal co-operation of the people, India will now attain

a position of strength and influence and take her rightful place in the comity of nations. (*Loud and prolonged cheers*)

(iii)

*Address by the President*

Mr. President: Your Excellency and members of the Assembly, I request you to communicate to His Majesty the gratitude of this Assembly for the message he has very kindly sent to us today. With the knowledge that we will have his sympathy and kindness in the task that we are going to take in our hands today, we are confident that we will be able to accomplish it in a proper way.

Mr. President then delivered his speech in Hindustani, the full text of which is published in the Hindustani Edition of the Debates.

Mr. President: I have to announce that a message of greetings and goodwill has also been received from the French Minister of Foreign Affairs, M. Giraud, on behalf of the Government of France and on his own behalf. It is regretted that I do not have the text of the message with me, but it will be inscribed in the records of the Assembly along with the other messages which I have read today.

Your Excellency, may I request you to convey to His Majesty a message of loyal greetings from this House and of thanks for the gracious message which he has been good enough to send us? That message will serve as an inspiration in the great work on which we launch today and I have no doubt that we anticipate with great pleasure association with Great Britain of a different kind. I hope and trust that the interest and the sympathy and the kindness which have always inspired His Majesty will continue in favour of India and we shall be worthy of them.

Let us in this momentous hour of our history when we are assuming power for the governance of our country recall in grateful remembrance the services and sacrifices of all those who laboured and suffered for the achievement of the independence we are attaining today. Let us on this historic occasion pay our homage to the maker of our modern history, Mahatma Gandhi, who has inspired and guided us through all these years of trial and travail and who in spite of the weight of years is still working in his own way to complete what is left yet unaccomplished.

Let us gratefully acknowledge that while our achievement is in no small measure due to our own sufferings and sacrifices, it is



also the result of world forces and events and last though not least it is the consummation and fulfilment of the historic traditions and democratic ideals of the British race whose far-sighted leaders and statesmen saw the vision and gave the pledges which are being redeemed today. We are happy to have in our midst as a representative of that race Viscount Mountbatten of Burma and his consort who have worked hard and played such an important part in bringing this about during the closing scenes of this drama. The period of domination by Britain over India ends today and our relationship with Britain is henceforward going to rest on a basis of equality, of mutual goodwill and mutual profit.

It is undoubtedly a day of rejoicing. But there is only one thought which mars and detracts from the fullness of this happy event. India, which was made by God and Nature to be one, which culture and tradition and history of millenniums have made one, is divided today and many there are on the other side of the boundary who would much rather be on this side. To them we send a word of cheer and assurance and ask them not to give way to panic or despair but to live with faith and courage in peace with their neighbours and fulfil the duties of loyal citizenship and thus win their rightful place. We send our greetings to the new Dominion which is being established today there and wish it the best luck in its great work of governing that region and making all its citizens happy and prosperous. We feel assured that they all will be treated fairly and justly without any distinction or discrimination. Let us hope and pray that the day will come when even those who have insisted upon and brought about this division will realise India's essential oneness and we shall be united once again. We must realise however that this can be brought about not by force but large-heartedness and co-operation and by so managing our affairs on this side as to attract those who have parted. It may appear to be a dream but it is no more fantastic a dream than that of those who wanted a division and may well be realised even sooner than we dare hope for today.

More than a day of rejoicing it is a day of dedication for all of us to build the India of our dreams. Let us turn our eyes away from the past and fix our gaze on the future. We have no quarrel with other nations and countries and let us hope no one will pick a quarrel with us. By history and tradition we are a peaceful people and India wants to be at peace with the world. India's Empire outside her own borders has been of a different kind from all other Empires. India's conquests have been the conquests of spirit which did not impose heavy chains of slavery, whether of iron or of gold, on others but tied other lands and



other peoples to her with the more enduring ties of golden silk of culture and civilisation, of religion and knowledge (*gyan*). We shall follow that same tradition and shall have no ambition save that of contributing our little mite to the building of peace and freedom in a war-distracted world by holding aloft the banner under which we have marched to victory and placing in a practical manner in the hands of the world the great weapon of Non-violence which has achieved this unique result. India has a great part to play. There is something in her life and culture which has enabled her to survive the onslaughts of time and today we witness a new birth full of promise, if only we prove ourselves true to our ideals.

Let us resolve to create conditions in this country when every individual will be free and provided with the wherewithal to develop and rise to his fullest stature, when poverty and squalor and ignorance and ill-health will have vanished, when the distinction between high and low, between rich and poor, will have disappeared, when religion will not only be professed and preached and practised freely but will have become a cementing force for binding man to man and not serve as a disturbing and disrupting force dividing and separating, when untouchability will have been forgotten like an unpleasant night dream, when exploitation of man by man will have ceased, when facilities and special arrangements will have been provided for the *adimjatis* of India and for all others who are backward, to enable them to catch up to others and when this land will have not only enough food to feed its teeming millions but will once again have become a land flowing with rivers of milk, when men and women will be laughing and working for all they are worth in fields and factories, when every cottage and hamlet will be humming with the sweet music of village handicrafts and maids will be busy with them, and singing to their tune—when the sun and the moon will be shining on happy homes and loving faces.

To bring all this about we need all the idealism and sacrifice, all the intelligence and diligence, all the determination and the power of organisation that we can muster. We have many parties and groups with differing ideals and ideologies. They are all trying to convert the country to their own ideologies and to mould the constitution and the administration to suit their own view-point. While they have the right to do so, the country and the nation have the right to demand loyalty from them. All must realise that what is needed most today is a great constructive effort—not strife, hard solid work—not argumentation, and let us hope that all will be prepared to make their contribution. We want the peasant

to grow more food, we want the workers to produce more goods, we want our industrialists to use their intelligence, tact and resourcefulness for the common good. To all we must assure conditions of decent and healthy life and opportunities for self-improvement and self-realisation.

Not only have the people to dedicate themselves to this great task that lies ahead but those who have so far been playing the role of rulers and regulators of the lives of our men and women have to assume the role of servants. Our army has won undying glory in distant lands for its bravery and great fighting qualities. Our soldiers, sailors and airmen have to realise that they now form a national army on whom devolves the duty not only of defending the freedom which we have won but also to help in a constructive way in building up a new life. There is no place in the armed forces of our country which is not open to our people, and what is more they are required to take the highest places as soon as they can so that they may take full charge of our defences. Our public servants in various departments of Government have to shed their role as rulers and have to become true servants of the people that their compeers are in all free countries. The people and the Government on their side have to give them their trust and assure them conditions of service in keeping with the lives of the people in whose midst they have to live and serve.

We welcome the Indian States which have acceded to India and to their people we offer our hand of comradeship. To the princes and the rulers of the States we say that we have no designs against them. We trust they will follow the example of the King of England and become constitutional rulers. They would do well to take as their model the British monarchical system which has stood the shock of two successive world wars when so many other monarchies in Europe have toppled down.

To Indians settled abroad in British Colonies and elsewhere we send our good wishes and assurance of our abiding interest in their welfare. To our minorities we give the assurance that they will receive fair and just treatment and their rights will be respected and protected.

One of the great tasks which we have in hand is to complete the constitution under which not only will freedom and liberty be assured to each and all but which will enable us to achieve and attain and enjoy its fulfilment and its fruits. We must accomplish this task as soon as possible so that we may begin to live and work under a constitution of our own making, of which we may all be proud, and which it may become our pride and privilege to defend

and to preserve to the lasting good of our people and for the service of mankind. In framing that constitution we shall naturally draw upon the experience and knowledge of other countries and nations no less than on our own traditions and surroundings and may have at times to disregard the lines drawn by recent history and lay down new boundary lines not only of provinces but also of distribution of powers and functions. Our ideal is to have a constitution that will enable the people's will to be expressed and enforced and that will not only secure liberty to the individual but also reconcile and make that liberty subservient to the common good.

We have up to now been taking a pledge to achieve freedom and to undergo all sufferings and sacrifices for it. Time has come when we have to take a pledge of another kind. Let no one imagine that the time for work and sacrifice is gone and the time for enjoying the fruits thereof has come. Let us realise that the demand on our enthusiasm and capacity for unselfish work in the future will be as great as, if not greater than, what it has ever been before. We have, therefore, to dedicate ourselves once again to the great cause that beckons us. The task is great, the times are propitious. Let us pray that we may have the strength, the wisdom and the courage to fulfil it.

*Hoisting of The National Flag*

Mr. President: His Excellency will now give the signal for hoisting the Flag.

(The sound of a gun being fired was heard.)

H.E. the Governor-General: That is the signal for hoisting the flag over this roof.

## PART NINE

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#### THE MONTAGU-CHELMSFORD REPORT ON INDIAN STATES, NOVEMBER 22, 1918<sup>1</sup>

In view of the fact that constitutional changes in British India may react in an important manner on the native States we have carefully considered their present relations with the Government of India. We became aware at the outset that, although the policy which has been followed for more than a century towards the States has been amply vindicated by the trust and confidence which the Princes as a body repose in the British Government, yet in some quarters uncertainty and uneasiness undoubtedly exist. Some Rulers are perturbed by a feeling that the measure of sovereignty and independence guaranteed to them by the British Government has not been accorded in full, and they are apprehensive lest in process of time their individual rights and privileges may be whittled away. We ascribe this feeling to two causes. In the first place, the expression 'Native States' is applied now, and has been applied during the past century, to a collection of about seven hundred rulerships which exhibit widely differing characteristics, which range from States with full autonomy over their internal affairs to States in which Government exercises, through its agents, large powers of internal control, and even down to the owners of a few acres of land. Uniformity of terminology tends to obscure distinctions of status; and practice appropriate in the case of the lesser Chiefs may be inadvertently applied to the greater ones also. We are convinced that it would improve and assist future relations between the Crown and the States if a definite line could be drawn separating the Rulers who enjoy full powers of internal administration from the others.

In the second place, we cannot disregard the fact that the general clause which occurs in many of the treaties to the effect that the Chief shall remain absolute Ruler of his country has not in the past precluded, and does not even now preclude, interference with the administration by Government through the agency of its representatives at the Native Courts. We need hardly say that such interference has not been employed in wanton disregard of treaty

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1. Report of the Joint Committee on Indian Constitutional Reforms (1918) paras 302-11.

obligations. During the earlier days of our intimate relations with the States, British agents found themselves compelled, often against their will, to assume responsibility for the welfare of a people, to restore order from chaos, to prevent inhuman practices, and to guide the hands of a weak or incompetent Ruler as the only alternative to the termination of this rule. So, too, at the present day, the Government of India acknowledges, as trustee, a responsibility (which the Princes themselves desire to maintain) for the proper administration of States during a minority, and also an obligation for the prevention or correction of flagrant misgovernment.

Moreover, we find that the position hitherto taken up by Government has been that the conditions under which some of the treaties were executed have undergone material changes, and the literal fulfilment of particular obligations which they impose has become impracticable. Practice has been based on the theory that treaties must be read as a whole and that they must be interpreted in the light of the relations established between the parties not only at the time when a particular treaty was made, but subsequently. The result is that there has grown up around the treaties a body of case-law which anyone who is anxious to appreciate the precise nature of existing relations must explore in Government archives and in text-books. The Princes, viewing the application of this case-law to their individual relations with Government, are uneasy as to its ultimate effect. They fear that usage and precedent may be exercising a levelling and corroding influence upon the treaty rights of individual States.

It is thus clear that some ambiguity and misunderstanding exist as to the exact position. The Government of India has already taken cognizance of this, and is affording opportunity for the verification of any specific complaints that may be made. We do not desire to say anything that might prejudice the issue of these inquiries. In the meanwhile, however, we suggest that the time has come when it would be well to review the situation, of course only by consent of parties, not necessarily with a view to any change of policy, but in order to simplify, standardize, and codify existing practice for the future. Before we pass on to state our own proposals we wish to say that we think that the Princes should be assured in the fullest and freest manner that no constitutional changes which may take place will impair the rights, dignities, and privileges secured to them by treaties, *sanads*, and engagements, or by established practice.

We have explained how, on various occasions in recent years, the Princes have met in conference at the invitation of the Viceroy.

These conferences have been of great value in assisting in the formulation of the Government's policy on important matters like minority administration and succession, and promoting interest in such questions as scientific agriculture and commercial and agricultural statistics. The meetings have given the Princes the opportunity of informing the Government as to their sentiments and wishes, of broadening their outlook, and of conferring with one another and with the Government. But although the meetings have in the last few years been regular they depend upon the invitation of the Viceroy; and our first proposal is to replace them by the institution of a Council of Princes. We wish to call into existence a permanent consultative body. There are questions which affect the States generally, and other questions which are of concern either to the Empire as a whole, or to British India and the States in common, upon which we conceive that the opinion of such a body would be of the utmost value. The Viceroy would refer such questions to the Council, and we should have the advantage of their considered opinion. We think it is all-important that the meetings should be regular, and that ordinarily the Council should meet once a year to discuss agenda approved by the Viceroy. Any member of the Council, or the Council as a whole, might request the Viceroy to include in the agenda any subject on which discussion was desired. If questions of sufficient importance arose in the intervals between the annual meetings the Princes might suggest to the Viceroy that an extraordinary meeting should be held. We contemplate that the Viceroy should be President and should as a rule preside, but that in his absence one of the Princes should be chairman. The rules of business would be framed by the Viceroy, after consultation with the Princes, who might perhaps from time to time suggest modifications in the rules. We believe that most of the Princes desire to see such a Council created, although some of the most eminent among them have not taken part in the conference in 1916 and 1917. The direct transaction of business between the Government of India and any State would, of course, not be affected by the institution of the Council.

It has been represented to us that difficulties have occurred in the past by reason of the fact that the Political Department comes to decisions affecting the Native States without being in a position to avail itself of the advice of those who are in a position to know from their own personal experience or the history of their States the right course to pursue. On matters of custom and usage in particular we feel that such advice would be of great value, and would help to ensure sound decisions. Our second proposal therefore is that the Council of Princes should be invited annually to appoint a small standing committee, to which the Viceroy or the Political

Department might refer such matters. We need hardly say that no reference affecting any individual State would be made to the committee without the concurrence of its Ruler. The Council of Princes might appoint to the standing committee not only Princes, but also Dewans or Ministers, who were willing to place their services at the disposal of the Viceroy when called upon for advice. This machinery is based on the principle of consultation which in so many matters underlies our recommendations in regard to British India.

Our next proposal is concerned with disputes which may arise between two or more States, or between a State and a Local Government or the Government of India, and with a situation caused when a State is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives. In such cases there exists at the present moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues, such as might satisfy the States, particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner. Whenever, therefore in such cases the Viceroy felt that such an inquiry was desirable we recommend that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and to report its conclusions to him. If the Viceroy were unable to accept the finding the matter would be referred for decision by the Secretary of State. The commission that we have in mind would be composed of a judicial officer of rank not lower than a High Court Judge and one nominee of each of the parties concerned.

In another class of cases we have a similar proposal to make. It has happened, and we conceive that it may happen though rarely in the future, that the question arises of depriving the Ruler of a State of his rights, dignities, and powers or of debarring from succession a member of his family. If such cases occur in the future we think that they should be always referred to a commission to be appointed by the Viceroy to advise him. It should consist of five members, including ordinarily a High Court Judge and two Ruling Princes. The names of the commissioners should be intimated in advance to the defendant before they were appointed; and the proceedings of the commission should be made public only if the defendant so desired.

Our two remaining proposals bear a direct relation to our constitutional scheme for British India. We recommend that as a gene-

ral principle all important States should be placed in direct political relations with the Government of India.

Our last proposal is intended to provide some means of deliberation between the Government of India and the Princes on matters of common interest to both, and so to ensure that as far as possible decisions affecting India as a whole shall be reached after the views of the Durbars have been taken into account. In the past it certainly has occasionally happened that the States were vitally affected by decisions taken without reference to them; and yet no machinery for such collective consultation with them has hitherto existed. It seems to us that they have a clear right to ask for it in the future. We have abandoned for the present all consideration of suggestions that Ruling Princes, or some representatives of their Order, should be members of the Council of State. Not only would this at the present stage infringe the doctrine of non-interference on the part of the Princes in the affairs of British India but we are satisfied that few, if any, of the Princes themselves are ready for such a step. On the other hand, it seems to us that, when a Council of Princes have been established, and when a Council of State and a Privy Council have been created, the machinery will exist for bringing the senatorial institutions of British India into closer relations when necessary with the Rulers of the Native States. Matters affecting the Native States generally, or the Native States and British India in common, or the Empire, might, as we have seen, be referred to the Council of Princes. It would thus be possible for the Viceroy, when he thought fit, to arrange for joint deliberation and discussion between the Council of State and the Council of Princes, or between representatives of each body. He might also invite members of the Council of Princes to serve on committees of the Privy Council.

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### THE INDIAN STATUTORY COMMISSION ON THE CHAMBER OF PRINCES, MAY 12, 1930<sup>1</sup>

The Chamber of Princes contains, in the first place, 108 Rulers of States who are members in their own right. They are Ruling Princes who enjoy permanent dynastic *salutes* of eleven guns or over, together with other Rulers of States who exercise such full or prac-

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1. *Indian Statutory Commission Report*, vol. I, paras. 108-10.



tically full internal powers as, in the opinion of the Viceroy, qualify them for individual admission to the Chamber. In the second place, the Chamber includes twelve additional members elected by the Rulers of 127 other States not included in the above. These representative members are chosen from among these Ruling Chiefs by a system of group voting. The Viceroy is the President of the Chamber, and a Chancellor and Pro-Chancellor are elected from among the members annually. An extremely important organ of the Chamber is its Standing Committee which consists of seven members including the Chancellor and Pro-Chancellor. The functions of the Standing Committee are to advise the Viceroy on questions referred to the Committee by him 'and to propose for his consideration other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common'.

The Chamber of Princes is a deliberative, consultative and advisory, but not an executive, body. It meets annually in its own Hall of Debate in the magnificent Council House which has recently been completed at New Delhi. Two important provisions in its constitution must be set out verbatim :

'Treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, their States and the members of their families and the actions of individual Rulers shall not be discussed in the Chamber.

'The institution of the Chamber shall not prejudice in any way the engagements or the relations of any State with the Viceroy or Governor-General (including the right of direct correspondence) nor shall any recommendation of the Chamber in any way prejudice the rights or restrict the freedom of action of any State.'

The latter of these provisions makes plain that the establishment of the Chamber of Princes has not affected the individual relations between any Indian State and the representative of the Crown. The Viceroy is himself in charge of the Political Department of the Government of India, and this is the department which deals with matters affecting the Indian States. Following upon the recommendations of the Montagu-Chelmsford Report,<sup>1</sup> most of the more important States are now placed in direct political relations with the Central Government and this has involved the transfer, in a large number of cases, of States' relations from a Provincial Government to the Government of India. There are, however, some

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1. Montagu-Chelmsford Report, para 310.

States that are not in direct relations with the Governor-General-in-Council but with the Governors-in-Council. Most of the important Rulers have and frequently exercise the right of direct access to and correspondence with the Viceroy. The Political Department of the Government of India is manned by officers, for the most part British, selected from the Indian Civil Service and the Indian Army. Political officers are accredited as individual Residents to the greater States. In each of the Agencies, namely, Rajputana, Central India, the Punjab States, the Western India States, the Madras States and Baluchistan there is an Agent to the Governor-General with a staff of officers, many of whom are accredited to particular States or groups of States. At the head of the Political Department is the Political Secretary who is the Viceroy's immediate adviser in affairs concerning the States.

The establishment of the Chamber of Princes marks an important stage in the development of relations between the Crown and the States, for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours. That principle, indeed, had already been giving place to the idea of conference and co-operation amongst the Ruling Princes of India, but this latter conception was not embodied in permanent shape until the Chamber of Princes was established. The Chamber has enabled free interchange of views to take place on weighty matters concerning the relationship of the States with the Crown and concerning other points of contact with British India. Notwithstanding that some States of great importance, like Hyderabad and Mysore, have stood aloof,<sup>1</sup> its work during the last nine years especially, perhaps, the work of its Standing Committee proves that the time was ripe for advance. But this advance does not as yet cross the boundary which must be traversed before the first actual step on the road of All-India federation can be taken. We shall, in our 2nd volume, discuss the development which may be hoped for in future relations with the Indian States, and we conclude this chapter by a quotation which postulates the necessary condition of further progress in this direction.

'I make no secret of my view,' said Lord Irwin in June 1929, 'that in any proposals that may be made it is essential, on every ground of policy and equity, to carry the free assent

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1. It was, however, announced at the meeting of the Chamber in February 1930, that His Exalted Highness the Nizam had sanctioned two grants of one lakh of rupees each for special purposes and annual contribution of Rs. 5,000 from 1930 to 1935 towards the expenses of the Chamber.

of the Ruling Princes of India, and that any suggestion that the treaty rights, which the Princes are accustomed to regard as sacrosanct, can be lightly set aside is only calculated to postpone the solution that we seek.'

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THE INDIAN STATES AND NATIONALIST INDIA: PRESIDENTIAL ADDRESS OF PANDIT JAWAHARLAL NEHRU AT THE ANNUAL SESSION OF THE ALL-INDIA STATES' PEOPLE'S CONFERENCE, FEBRUARY 15, 1939<sup>1</sup>

There are about six hundred States in India—big ones and small ones and tiny ones, which one cannot even place on the map. They differ greatly among themselves and some have advanced industrially and educationally, and some have had competent Rulers or Ministers. The majority of them, however, are sinks of reaction and incompetence and unrestrained autocratic power sometimes exercised by vicious and degraded individuals. But whether the Ruler happens to be good or bad, or his Ministers competent or incompetent, the evil lies in the system. This system has vanished from the rest of the world and, left to itself, it would have vanished from India also long ago. But in spite of its manifest decay and stagnation, it has been propped up and artificially maintained by British Imperialism. Offspring of the British power in India, suckled by imperialism, for its own purposes, it has survived till today, though mighty revolutions have shaken the world and changed it, empires have collapsed and crowds of princes and petty Rulers have faded away. That system has no inherent importance or strength, it is the strength of British imperialism that counts. For us in India, that system has in reality been one of the facets of imperialism. Therefore, when conflict comes, we must recognize who our opponent is.

We are told now of the so-called independence of the States and of their treaties with the Paramount Power, which are sacrosanct and inviolable and apparently must go on for ever and ever. We have recently seen what happens to international treaties and the most sacred of covenants when they do not suit the purposes of imperialism. We have seen these treaties torn up, friends and allies basely deserted and betrayed and the pledged word broken by England and France. Democracy and freedom were the sufferers and so it did not matter. But when reaction and autocracy and im-

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1. The Indian Annual Register (1939), Vol. 1, pp. 437-44.

perialism stand to lose, it does matter, and treaties, however moth-eaten and harmful to the people they might be, have to be preserved. It is a monstrous imposition to be asked to put up with these treaties of a century and a quarter ago, in the making of which the people had no voice or say. It is fantastic to expect the people to keep on their chains of slavery, imposed upon them by force and fraud, and to submit to a system which crushes the life-blood out of them. We recognize no such treaties and we shall in no event accept them. The only final authority and paramount power that we recognize is the will of the people, and the only thing that counts ultimately is the good of the people.

A new theory of the independence of the States has been advanced in recent years, and it has been advanced by the very power that holds them in an iron grip and keeps them in subjection. Neither history nor constitutional law gives any justification for this, and if we examine the origins of these States, most of their Rulers would be reduced to the status of feudal barons. But we need not trouble ourselves with legal research, as the practice and facts are plain enough. This practice has been for the British power to dominate these States completely and its slightest gesture is a command to them, which they disobey at their peril. The Political Department of the Government of India pulls the strings and the puppets dance to its tune, the local Resident is the master of the situation; and latterly the practice has grown of British officials being imposed as Ministers of the Rulers of the States. If this is independence, then it will be interesting to learn how it differs from the most abject subjection. There is no independence in the States, and there is going to be none, for it is hardly possible geographically and it is entirely opposed to the conception of a united free India. It is conceivable and desirable in the case of the larger States for them to have a great deal of autonomy within the framework of an Indian Federation. But they will have to remain integral parts of India and the major matters of common concern must be controlled by a democratic Federal Centre. Internally, they will have responsible government.

It is clear that the problem of the States would be easy of solution if the conflict was confined to the people and the Ruler. Many of the Rulers, left to themselves, would ultimately line themselves with the people and if they hesitated to do so, the pressure from below would soon induce them to change their minds. Not to do so would imperil their position and the only alternative would be complete removal. The Congress and the various Praja Mandals have so far made every effort to induce the Rulers to side with

their people and establish responsible government. They must realize that for them not to agree to do so will not stop the coming of freedom to their people; their opposition will only place an insurmountable barrier between them and their people, and an arrangement between the two will then become exceedingly difficult. The map of the world has changed many times during the last hundred years; empires have ceased to be and new countries have arisen. Even now, before our very eyes, we see this map changing. It requires no prophet to say with confidence that the Indian States system is doomed even as the British Empire, which has so long protected it, is doomed. It is the path of prudence as well as of wisdom for the Rulers to line themselves with their people and share with them in the new freedom, and instead of being despotic and disliked Rulers, with a precarious tenure, to be proud and equal citizens of a great Commonwealth. A few of the Rulers of the States have realized this and have taken some steps in the right direction. One of them, the Raja of Aundh, the Chief of a small State, has distinguished himself by his wisdom in granting responsible government to his people, and in doing so with grace and goodwill.

But, unhappily, most of them stick to their old ways and show no signs of change. They demonstrate afresh the lesson of history that when a class has fulfilled its purpose and the world has no need of it, it decays and loses wisdom and all capacity. It cannot adapt itself to changing conditions. In a vain attempt to hold on to what is fading away, it loses even what little it might have retained.

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What is the nature of the conflict today? This must be clearly understood. It varies slightly from State to State, but the demand everywhere is for full responsible government. Yet the conflict is not at present to enforce that demand, but to establish the right of organizing people for that demand. When this right is denied and civil liberties are crushed, no way is left open to the people to carry on what are called constitutional methods of agitation. Their choice then is either to submit and give up all political and even public activity, and to suffer a degradation of the spirit and a continuation of the tyranny that oppresses them, or to resort to direct action. This direct action, according to our code, is perfectly peaceful Satyagraha and a refusal to submit to violence and evil, whatever the consequences. The immediate issue today is, thus, one of civil liberties in most of the States, though the objective everywhere is responsible Government.

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The freedom of the people of the States is a big enough thing, yet it is part of the larger freedom of India, and till we gain that larger freedom, it is to be a struggle for us. If the Federation is imposed upon us, we shall fight it and sweep it away. Wherever the British Power intervenes against the people in the States, we shall have to face it. The time approaches when the final solution has to come—a Constituent Assembly of all the Indian people, framing the constitution of a free and democratic India.

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THE INDIAN PRINCES AND THE CRIPPS MISSION: RESOLUTION OF THE INDIAN STATES DELEGATION<sup>1</sup>

The Indian States delegation unanimously adopted the following resolution in respect of the proposals of His Majesty's Government which you discussed with them:

'The attitude of the Indian States in general on the Mission of the Lord Privy Seal is summed up in the resolution on the subject which was adopted unanimously at the recent session of the Chamber of Princes. The Indian States will be glad as always, in the interest of the motherland, to make their contribution, in every reasonable manner compatible with the sovereignty and integrity of the States, towards the framing of a new constitution for India.

'The States should be assured, however, that in the event of a number of States not finding it feasible to adhere, the non-adhering States or group of States so desiring should have the right to form a union of their own, with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose.'

The following is the text of the Resolution referred to:

(a) That this Chamber welcomes the announcement made in the House of Commons on March 11, 1942, by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and Leader of the House of Commons, and expresses the hope that it may help to unite India to intensify further her war effort and to strengthen the measures for defence of the Motherland.

1. The resolution was communicated to Sir Stafford Cripps by His Highness Digvijayasinhji Maharaja Jam Saheb of Nawanagar, the Chancellor of the Chamber of Princes, in his letter dated April 10, 1942—Cmd. 6350, pp. 15-16.

MEMORANDUM ON STATES' TREATIES AND PARAMOUNTCY

(b) That this Chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their rights arising from treaties, engagements and *sanads* or otherwise and ensure the future existence of sovereignty and autonomy of the States thereunder guaranteed, and leave them complete freedom duly to discharge their obligation to the Crown and to their subjects; it therefore notes with particular satisfaction the reference in the announcement of the Prime Minister to the fulfilment of the treaty obligations to the Indian States.

(c) That this Chamber authorizes its representatives to carry on the discussions and negotiations for constitutional advance of India with due regard to successful prosecution of war and interests of the States, and subject to the final confirmation by the Chamber and without prejudice to the right of the individual States to be consulted in respect of any proposals affecting their treaty or other inherent rights.

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MEMORANDUM ON STATES' TREATIES AND PARAMOUNTCY,  
MAY 12, 1946<sup>1</sup>

Prior to the recent statement of the British Prime Minister in the House of Commons an assurance was given to the Princes that there was no intention on the part of the Crown to initiate any change in their relationship with the Crown or the rights guaranteed by their treaties and engagements without their consent. It was at the same time stated that the Princes' consent to any changes which might emerge as a result of negotiations would not unreasonably be withheld.

The Chamber of Princes has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature.

His Majesty's Government have now declared that if the Succession Government or Governments in British India desire independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth. The Delegation have come here to assist in resolving the difficulties which stand in the way of India fulfilling this wish.

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1. Cmd. 6835.



During the interim period, which must elapse before the coming into operation of a new constitutional structure under which British India will be independent or fully self-governing, Paramountcy will remain in operation. But the British Government could not and will not in any circumstances transfer Paramountcy to an Indian Government.

In the meanwhile, the Indian States are in a position to play an important part in the formulation of the new constitutional structure for India, and H.M.G. have been informed by the Indian States that they desire in their own interests and in the interests of India as a whole, both to make their contribution to the framing of the structure, and to take their due place in it when it is completed. In order to facilitate this they will doubtless strengthen their position by doing everything possible to ensure that their administrations conform to the highest standard. Where adequate standards cannot be achieved within the existing resources of the State they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure.

It will also strengthen the position of States during this formative period if the various Governments which have not already done so take active steps to place themselves in close and constant touch with public opinion in their States by means of representative institutions.

During the interim period it will be necessary for the States to conduct negotiations with British India in regard to the future regulation of matters of common concern, especially in the economic and financial field. Such negotiations, which will be necessary whether the States desire to participate in the new Indian constitutional structure or not, will occupy a considerable period of time, and since some of these negotiations may well be incomplete when the new structure comes into being, it will, in order to avoid administrative difficulties, be necessary to arrive at an understanding between the States and those likely to control the succession Government or Governments that for a period of time the then existing arrangements as to these matters of common concern should continue until the new agreements are completed. In this matter, the British Government and the Crown Representative will lend such assistance as they can, should it be so desired.

When a new fully self-governing or independent Government or Governments come into being in British India, H.M.G.'s influence with these Governments will not be such as to enable them to carry out the obligations of Paramountcy.



## STATES PEOPLES' CONFERENCE RESOLUTION

Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of Paramountcy. This means that the rights of these States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States. Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the succession Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.

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#### RESOLUTION OF THE ALL-INDIA STATES PEOPLES' CONFERENCE, JUNE 10, 1946<sup>1</sup>

The General Council of the All-India States Peoples' Conference have considered the various statements made by the British Cabinet Delegation and the Viceroy in regard to the drawing up of the constitution for India. The council have noted with surprise and regret that the representatives of the States people have been completely ignored by the Cabinet Delegation in their talks and consultations. No constitution for India can have any validity or effectiveness unless it applies to the 93 million people of the Indian States and no such constitution can be satisfactorily made without reference to the representatives of the people. The General Council, therefore, record their feeling of resentment at the way the people of the States have been ignored and bypassed at this critical juncture of India's history.

The Council nevertheless have given full consideration to the issues at stake and are prepared even now to offer their co-operation in the building up of a free and united India of which the States are integral and autonomous parts. The policy of the States' people was laid down at the last session of the Conference at Udaipur and the Council adhere to that policy. That policy was based on full Responsible Government by the people of the States as integral parts of a free and federated India. Further it was laid down that any Constitution-making body should have as its members from

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1. *The Indian Annual Register*, Vol. I, January-June 1946, p. 215.

the States representatives of the people elected on the widest possible franchise. The Conference has also stated how the smaller States should be fitted in into the future Indian Union.

The Council welcome the statements made on behalf of the Princes in favour of a united and independent India. A free India must necessarily be a democratic India and, therefore, it is a natural corollary that Responsible Government should be established in the States. In any Constitution for India, there cannot be a combination of democracy and autocracy or feudalism. The Council regret that this has not been sufficiently realised or admitted by the Rulers.

In the statement issued by the Cabinet Delegation and the Viceroy on May 16 references to the States are brief and vague and no clear picture emerges as to how they will function in regard to the constitution-making processes. No reference has been made to the internal structure of the States. It is not possible to conceive of a combination of the existing internal structure, which is autocratic and feudal, with a democratic Constituent Assembly or a Federal Union.

The Council welcome, however, the statement that paramountcy will end when the new All-India constitution comes into effect. The end of paramountcy necessarily means the end of treaties existing between the rulers of the States and the British Paramount Power. Even during the interim period the functioning of paramountcy should undergo a fundamental change so as to prepare for its total termination.

In the scheme suggested by the Cabinet Delegation and the Viceroy, a Constituent Assembly is formed from representatives from both the Provinces and the States. But the States' representatives are supposed to come in only at the final sittings of the full Assembly when the Constitution of the Union Centre is being considered. While the representatives of the provinces and groups are charged with the duty of formulating the Constitutions of the Provinces and, if so desired, of the Groups as well, no parallel arrangement is contemplated which provides likewise for the framing of the Constitution of the States.

The Council are of the opinion that this lacuna should be filled. It is desirable for the Constituent Assembly to represent both the Provinces and the States from the earliest stages so that the latter representatives may separately sit and lay down the basic provisions of the State Constitutions simultaneously with the provincial representatives framing the Constitutions of the Provinces.

For this purpose, the Council are of opinion that wherever there are well-established Legislatures constituted on the basis of direct elections, the elected members of the legislatures should be accepted as the electorates for the election of representatives of the

## STATES PEOPLES' CONFERENCE RESOLUTION

Sates to the Constituent Assembly. Such a course should, however, be adopted only after free elections have been held in the States concerned.

In all other cases the representatives to the Assembly should be elected by the Regional Councils of the All-India States Peoples' Conference. This will insure, as nearly as possible, the election of true representatives of the people of the smaller States.

The Council are further of opinion that in the Negotiating Committee suggested by the Cabinet Delegation, there should be representatives of the people of States.

In any provisional arrangements that might be made pending the functioning of a new constitution for India as well as the States and Provinces, it is necessary that a unified policy should be pursued between the States, the Provinces, and the Provincial Government. For this purpose an Advisory Council should be created consisting of representatives of the Provisional Government of the Rulers and of the people of the States. This Council should deal with all common matters and should endeavour to co-ordinate different policies in different States so as to insure a certain uniformity. It should be the business of this Advisory Council to expedite internal change in the States with a view to the introduction of Responsible Government. The Advisory Council should also consider the question of grouping of States to enable them to form adequate units of the Federal Union, as well as the absorption of some States into the provinces. Matters relating to succession in the States, maladministration and the like should be referred to a tribunal for decision.

At the end of the interim period the States, either singly or as the case may be in groups, should form equal units of the Federal Union with equal rights with the provinces and with a democratic structure approximating to that prevailing in the provinces.

The General Council direct and authorise the Standing Congress Committee to take such steps as may be necessary to give effect to the general principles contained in the resolution.

### *Ban on Hyderabad Congress Criticised*

The Council also adopted three other resolutions, one demanding the release of political prisoners and the enjoyment of civil liberties, the second opposing the move for the separation of Kalat State in Baluchistan from the rest of India and the third condemning the Hyderabad State for its continued ban on the State Congress. The resolution on Hyderabad State says:

.. "Any State which does not even recognise elementary civil liberties is out of court in any discussion about the future. The

State of Hyderabad will have to change its ways completely before it can entitle itself to any consideration in assemblies determining the future of India. In the event of the ban on the State Congress continuing and other civil liberties being denied it will be the right of the State Congress to function in spite of this ban."

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LETTER FROM SIR N. GOPALASWAMY AIYANGAR TO PANDIT  
JAWAHARLAL NEHRU, JUNE 18, 1946

11, Ferozeshah Road,  
New Delhi.

18th November, 1946.

My Dear Pandit Jawaharlalji,

Herewith the information regarding representation of States in the Constituent Assembly, which I promised on Saturday to send you.

The 93 seats—the maximum number allotted for the States in the final Constituent Assembly by the Cabinet Delegation—are distributed amongst the State in the tables attached. I have worked on the 17 Divisions of States mentioned in the table given in Part II, Schedule I of the Govt. of India Act 1935. Barring the States, about 20 in number, which on account of their population will be entitled to representation in their individual right in the Constituent Assembly, the table in the Government of India Act Schedule gives as good a grouping of the other States as can be evolved for purposes of such representation at this juncture. No doubt alternative grouping for this purpose can be proposed, but it is doubtful whether such alternatives will meet with general acceptance. You will notice that I have given individual representation to all States with a population of not less than .75 million each. On this principle Bhopal will get a seat in its own right.

On the question of the method by which the representatives of the States should be chosen, the general principle should of course be that, as the Constituent Assembly is a body of representatives of the people, it is the latter than should choose their representatives either through direct or through indirect election. The majority of the States entitled to individual representation possess legislatures of some sort. Some of the smaller States also have representative bodies of some kind or other. Wherever such bodies are available they might be used as electorates for the Constituent

Assembly. Where such statutory representative bodies do not exist, non-statutory representative bodies might be created *ad hoc* for this purpose. The details for this will have to be worked out in consultation with the State Governments and the States Peoples' Conference. I think the ruling principle should be that all the representatives of a State should be returned by election. It looks as if several Rulers are willing to agree to a proportion of 50 : 50 but this is not enough. Some of them insist that the entire body of the representatives from their States should be nominated by them. Others have said that they are prepared only to consult their legislature before making up their list. Attitude of this kind, while it indicates a recognition of the need for not ignoring the people of the State in this connection, is evidence of an inadequate appreciation of the big change in outlook that underlies the convoking of a Constituent Assembly for constitution making. The authority that such an assembly has for settling the constitution of the Union and the Units is derived from the people. The assembly should, therefore, essentially be a body consisting of representatives chosen by the people. It would undoubtedly be an advantage that amongst the persons so chosen there should be a considerable body of individuals who have been closely associated with the existing Governments at the Centre and in the Units both in the legislatures and in the executives. As regards provinces, the provincial legislatures have returned persons not in permanent service who fall within these categories. In the case of the Indian States, however, the number of non-officials who have been intimately associated with the executives and legislatures is extremely small and it would perhaps be helpful if in the instructions to be issued for choosing representatives of Indian States provision is made for the coming in of persons who have run the administration in those States. Such instructions may, among other things, direct that the election shall be by the method of proportional representation by the single transferable vote. This, it seems to me, will enable the Prime Ministers of all important States which are entitled to more than one seat to get elected. They should be able to score the quota and it may be argued that Prime Ministers who are unable to score even the quota in a multiple member constituency cannot in reason claim to represent the people of the State.

It is possible, however, that both Rulers and their Prime Ministers will strongly oppose this proposal. A compromise that could be considered for an agreed solution might be as follows:—

- (a) that where a State or group is entitled to only one seat it should be filled by election, and

# INDIAN CONSTITUTIONAL DOCUMENTS

- (b) that where individual States or groups are entitled to more than one seat the Prime Minister or Dewan shall be one of the persons returned by the electorate concerned, such return being ensured by a directive issued to the electorate by the Central executive of the States Peoples' Conference, or the regional executive or by some other analogous organisation (this procedure will be in keeping with what was done in British India by the High Commands of the Congress and the Muslim League).

Practically all the legislatures in the Indian States contain a substantial element of members nominated by the Ruler. I should be prepared in the present circumstances to agree that the electorate in each of those legislatures need not be confined to elected members alone and that the electorate might consist of all members of the legislature. This concession is worth making for the purpose of reaching an agreed solution.

Yours sincerely,  
N. Gopalaswamy.

The Hon. Pandit Jawaharlal Nehru,  
New Delhi.

## STATES WITH A POPULATION OF NOT LESS THAN ONE MILLION.

DIVISION AS SHOWN IN PARA 15 (iii) PART 2 OF FIRST SCHEDULE	NAME OF STATE	POPULATION IN MILLIONS	NO. OF SEATS ENTITLED.
I	Hyderabad	16.33	16
II	Mysore	7.32	7
III	Kashmir	4.02	4
IV	Gwalior	4.00	4
V	Baroda	2.85	3
VI <sup>1</sup>			1
IX	Travancore	6.07	6
	Cochin	1.42	1
X	Udaipur	1.92	2
	Jaipur	3.04	3
	Jodhpur	2.55	3
	Bikaner	1.29	1
XI	Indore	1.51	1
	Rewa	1.82	2
XIII	Kolhapur	1.09	1
XIV	Patiala	1.93	2
	Bahawalpur	1.34	1
	16	58.50	58 <sup>2</sup>

1. The inclusion of Division VI here is evidently a mistake, for it is shown below in the third group. But we have followed the original.
2. The total of column three is 57; there are obvious reasons for making it 58 here.

LETTER—GOPALASWAMY AIYANGAR TO JAWAHARLAL NEHRU

STATES WITH A POPULATION OF NOT LESS THAN .75 OF A MILLION,  
BUT LESS THAN ONE MILLION.

DIVISION	NAME OF STATE	POPULATION	NO. OF SEATS ENTITLED.
X	Alwar	0.82	1
	Kotah	0.77	1
XI	Bhopal	0.78	1
XVI	Mayurbhanj	0.99	1
	4	3.36	4

STATES WITH A POPULATION OF LESS THAN .75 MILLION.

DIVISION	NO. OF STATES	POPULATION	NO. OF SEATS ENTITLED.
VI	1	0.25	—
VII	1	0.12	—
VIII	2	0.92	1
IX	3	0.49	—
X	13	2.75	3
XI	25	3.01	3
XII	29	5.23	5
XIII	15	1.66	2
XIV	13	2.83	3
XV	3	1.66	2
XVI	23	6.13	6
XVII	All other States.*	6.27	6
		31.32	31

\* Described in para 12, of Part II, first schedule, of Government of India Act 1935—such States being States which on the first day of January 1935 were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Central India Agency, or the Rajputana Agency, or were in political relations with the Government of the Punjab, or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion.

## NOTES BY SIR N. GOPALASWAMY AIYANGAR

(i)

*November 18, 1946*

In the White Paper that was presented to Parliament, the first mention of the Negotiating Committee is to be found in the last sentence of paragraph 19(ii) of the Cabinet Mission's statement dated 16th of May. The whole paragraph is in these terms:—

“It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93: but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a negotiating committee.”

What exactly is meant by the preliminary stage is not clear. In certain quarters it has been assumed that the preliminary stage is the same thing as the preliminary meeting of the Constituent Assembly referred to in paragraph 19(iv). This is by no means self-evident.

That at the stage of negotiations a Negotiating Committee will represent the Indian States is not the same thing as saying that the States come into the Constituent Assembly at that stage and that in that Assembly the members of the Negotiating Committee will be their sole representatives. The business contemplated for the preliminary meeting under the Cabinet Mission's plan does not envisage any matters in respect of which the States could be said to be entitled to a voice. This interpretation of the Cabinet Mission's own scheme should not be construed as my considered view that the States should not come into the Constituent Assembly except at the final meeting. On the other hand, I have throughout been of the opinion that the consultation as regards the method of selection of States' representatives should be completed sufficiently early to enable the 93 representatives allotted to the States coming into the Constituent Assembly even at its preliminary meeting.

From paragraph 4 of the Nawab of Bhopal's letter to the Viceroy dated 19th June 1946, it appears that the Viceroy extended an invitation to the Chancellor of the Chamber of Princes to set up a Negotiating Committee. The Viceroy's letter containing this invitation is not amongst the published papers. The Nawab's letter takes it for granted that the Negotiating Committee set up for the States should negotiate with a corresponding committee which was expected to be set up by the representatives of British India on



the Constituent Assembly. He then went on to say that the negotiations between the two committees was to be considered by the Standing Committee of Princes and the Committee of Ministers and the Constitutional Advisory Committee, whose recommendations would thereafter be placed before a general conference of Rulers and representatives of States. He added that the decision on the question whether the States should or should not join the Constituent Assembly would be taken by that conference and would depend on the result of the forthcoming negotiations. It is obvious from this that the Nawab's understanding of the functioning of the Negotiating Committee was that the negotiations would be carried on outside the Constituent Assembly and that only after considering the results of the negotiations would the States decide whether they should come into the Constituent Assembly at all. In the face of this, it is somewhat extraordinary that the claim should now be put forward that the members of the States Negotiating Committee should sit as of right as members of the Constituent Assembly even at its preliminary meeting.

The Viceroy's reply dated 29th June to the Nawab of Bhopal only confirms this view. In it he says he has merely taken note of the personnel selected by the 'States' to represent them on the Negotiating Committee. He goes on to say: "I will inform Your Highness as soon as I am in a position to do so of the time and place of the Committee's meeting. The composition of the corresponding committee from British India cannot, I think, be determined in advance of the preliminary session of the Constituent Assembly." The implication obviously is that the States Negotiating Committee should commence to function only after a committee to treat with them had been set up by the Constituent Assembly at its first meeting and, therefore, that first meeting could not include any States representatives.

The debate on the Cabinet Mission's work in India took place in the House of Lords and the House of Commons in July 1946. Lord Pethick-Lawrence in the House of Lords and Sir Stafford Cripps in the House of Commons assumed that the Negotiating Committee for the States had been set up. What had happened was that certain names had been sent up by the Chancellor to the Crown Representative and the latter had merely noted that fact. It is significant that even today the representatives of the States who are assembled in Delhi are speaking of the list of names for the Negotiating Committee being published only after the meeting of the Standing Committee of Princes, which will conclude on the 22nd instant. Lord Pethick-Lawrence appears to have spoken loosely in the House of Lords. He spoke of a Negotiating Committee having

been set up to arrange for the participation of the States in the Constitution-making body. This is not entirely consistent with his own statement later in his speech to the following effect:—

“As to the States, they need have no anxiety since it is for them to decide freely to come in or not, as they choose. It is for that purpose that they have set up a Negotiating Committee and I am sure that that Committee will have the wisdom to work out an acceptable basis for their co-operation in the Assembly.”

Apart from the internal conflict in his own speech, I rather think that in neither of the two statements did he correctly interpret the terms of the Mission's statement of May 16th. That statement gives no option to any State to decide whether it would come into the Union or not and made no provision for the members of the Negotiating Committee functioning as members of the Constituent Assembly and participating in the work of that Constitution-making body. The representatives of the States who were intended to engage in such participation were the 93 persons, only the method of whose selection was to be determined by consultation.

While the Viceroy and the Nawab of Bhopal in their correspondence with each other assumed that the negotiations were to be conducted between the Negotiating Committee set up for the States and a corresponding committee to be set up by the Constituent Assembly after it met, and while the Secretary of State talked of the Negotiating Committee actually participating in the Constitution-making body, Sir Stafford Cripps in the House of Commons spoke only of negotiations between the Negotiating Committee and the major British Indian parties. His actual words were:

“There will of course have to be close negotiations between the Negotiating Committee which the States have set up and the major British Indian parties both as to the representation of the States in the Constituent Assembly and as to their ultimate position in the Union.”

It is not a fair inference from this that the negotiations between the Negotiating Committee and the major British Indian Parties were to be conducted inside the Constituent Assembly of which the members of the Negotiating Committee were to be regarded as members in their own right.

(ii)

*November 21, 1946*

An early press account of the discussion in the Constitutional Advisory Committee of the Chamber of Princes on the 19th instan

gave the following list of the functions which, it was understood, were to be assigned to be the States Negotiating Committee:—

- (1) Method of selecting the 93 States' representatives who will take part in the Constituent Assembly in its final stages.
- (2) Continuance of the monarchical form of Government in the States.
- (3) Financial relations of the future all-India Union with the States.
- (4) Criteria for adherence to the Union.
- (5) The part that the Negotiating Committee should take in the election of the Chairman of the Constituent Assembly and in framing its rules of procedure and other major issues affecting the Indian States.

I understand that item (5) was omitted in the later discussion of the Constitutional Advisory Committee. Item (4) probably refers to the determination of the size of a States-Unit in the future federation. This and item (3) are really matters for discussion in the Constituent Assembly as a whole after the representatives of the States have come into it. There is at present no idea of interfering with the continuance of the monarchical form of Government in the States. It need not be a matter for negotiation at all at the present stage. Item (2), therefore, has to be dropped out. Item (1) is thus the really important issue which the Negotiating Committee has to decide immediately.

The personnel of the States' Negotiating Committee has been announced in the papers this morning with the authority, presumably, of the Chamber of Princes. It has a strength of 10, of whom three are Rulers and one a Prince; four are Prime Ministers of States, the remaining two being the Constitutional Adviser and the Secretary to the Chancellor of the Chamber of Princes. The three Rulers and Prince belong to their respective States; the four Prime Ministers do not belong to the States where they hold office and three of them come from British India as also the Constitutional Adviser and Secretary. It has been stated further that this committee "will meet any representative Committee which may be set up by the British India portion of the Constituent Assembly as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate the terms of States' participation in the final Constituent Assembly and as to their ultimate position in the proposed all-India Union. The members of the States Negotiating Committee will also be available to serve on such other committees as may be set up by the Constituent Assembly to consider questions which, in

the opinion of the States Negotiating Committee, may also concern the States." For the all-comprehensive and the all-important functions proposed to be assigned in general terms to this Negotiating Committee, it can hardly be said that its representative character is such that whatever it agrees to will be treated as binding even by all Rulers or Governments of Indian States, much less by the people of the States.

The first meeting of the Constituent Assembly consisting, as it will, of elected representatives of the people of British India cannot agree to set up a committee of its own to negotiate matters concerning States with any committee which does not include representatives of the people of the States. I take it that the Crown Representative or the Chancellor of the Chamber of Princes will write to the Chairman of the Constituent Assembly requesting that the latter might set up a committee of its own for negotiating with the States Negotiating Committee. It will be for the Steering Committee of the Constituent Assembly to decide whether a motion should be moved by a member of the Constituent Assembly for the appointment of such a committee. Before the Steering Committee takes its decision in this regard, it will be desirable that it should ascertain from the Crown Representative or the Chancellor whether he will arrange that the States Negotiating Committee will be re-constituted so as to include representatives of the States people, nominated primarily by the President of the States Peoples' Conference executive and that such representatives should at least be equal in number to the Rulers and Ministers nominated to the Committee. It might be made clear that, unless this course was agreed to, the Steering Committee would not place the motion for the appointment of a corresponding committee before the Constituent Assembly.

If preliminary pourparlers indicate that a deadlock would block progress in case the Steering Committee took this stand, it might consider one of the following alternative courses:

- (1) Motion may be made for the appointment of a committee by the Constituent Assembly with a directive to such committee that it should negotiate with the States Negotiating Committee only after it had been enlarged or re-constituted on the lines indicated in the above paragraph.
- (2) A motion may be made to appoint a committee of the Constituent Assembly, which besides members of the Assembly will include the Rulers and Ministers already named by the Crown Representative or Chancellor and will co-opt a specified number of representatives of the people of the

States nominated primarily by the President of the States' Peoples Conference. In this case there will be only one committee, that committee being a committee of the Constituent Assembly, in which, by authority derived from the Constituent Assembly, representatives of the Government and people of the States will be included.

- (3) A motion may be made for the appointment of a committee of the Constituent Assembly whose strength shall be 12 (2 more than that of the committee already appointed by the Crown Representative or Chancellor) and which shall consist of 6 members of the British India portion of the Assembly and 6 representatives of the States Peoples recommended by the President of the States Peoples' Conference.
- (4) Should there be any insuperable difficulty, whether of substance or procedure, in including in the committee of the Constituent Assembly persons who are not members of it, the personnel of the Committee might be confined to such members of the Assembly as have participated in the work of the States Peoples' Conference. It should be possible to find such men. This alternative should however be one of last resort.

The method of election of the 93 representatives of Indian States in the Constituent Assembly may be allowed to be *finally* decided in one of these ways. The decision, when it is made, should be implemented without having to go either before the Constituent Assembly as a whole or before any general conference of Rulers and Ministers of States for approval; so that the 93 States representing might take their places at least from the commencement of the second session of the Constituent Assembly.

Whether, pending the coming into the Constituent Assembly of the 93 representatives of States, it is necessary to make arrangements for providing for States Representation in committees set up by the Constituent Assembly at its first meeting is a matter for decision by the Constituent Assembly itself. Such representation can be provided for only by co-option and States' representatives co-opted on a particular committee should not be confined to the members of the States Negotiating Committee nominated by the Standing Committee of Princes, but might include other Ministers or States Peoples' representatives whose presence on such committees will be of real value. Such co-option pre-supposes the acceptance of my interpretation of the Cabinet Mission's statement of May 16th,

namely, that no State can claim the option of not acceding to the Union and this should be made perfectly clear.

In the Cabinet Mission's memorandum on States' Treaties and Paramountcy dated 12th May 1946, reference is made to the conducting of certain negotiations with British India and the Indian States during the "interim" period. Para 4 refers to negotiations in regard to the future regulation of matters of common concern, especially in the economic and financial field. Where such matters have to be settled by negotiation, the negotiation should be between individual States and British India. No Negotiating Committee such as the one now appointed by the Chamber of Princes could claim to conduct negotiations on behalf of all the States in such a connection. Para 5 of the same memorandum refers to the negotiations between the States and British India in regard to the future political relationship between the two. Of the two alternatives there suggested for this political relationship, the first, namely, a federal arrangement, is a matter for being settled in the Constituent Assembly itself. The second, namely, "a particular political arrangement other than federal", is a relationship which each individual State, if it cannot enter into a full federal relationship, must forge for itself with the Federal Government and would also be very appropriately discussed in the Constituent Assembly. Negotiations in connection with these political relationships need, therefore, not be within the purview of the States Negotiating Committee which

N. G.<sup>1</sup>

21-11-46.

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# CORRESPONDANCE BETWEEN SARDAR VALLABHBHAI PATEL AND SHRI K. M. MUNSHI<sup>2</sup>

(i)

*Letter from Sardar Patel to Shri K. M. Munshi, dated December 7, 1946*

I learn on good authority that the Standing Committee of the Chamber of Princes has decided to assign the following duties to the States Negotiating Committee:

(i) The terms of the States participation in the final Constituent Assembly.

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1. N.G.=Sir N. Gopalaswamy Aiyangar.

2. Munshi papers.

(ii) The position of the States in the All-India Union.

(iii) To serve on the various Committees which the Constituent Assembly may form and in which the States have any concern.

Thus practically every matter which concerns the States has been committed to the care of the States Negotiating Committee. The question for our consideration is whether this Negotiating Committee has to settle the question of determining the method of election of States Representatives to the Constituent Assembly, or whether the Negotiating Committee has even a wider field of discussion on other subjects concerning the States.

Another important question for us to decide is whether the Constituent Assembly have any say in the matter of grouping of States, which the Chamber of Princes might decide on, or which any group of States independently might agree upon. You know that efforts are being made to form groups of States either independently or under the inspiration of the Chamber of Princes. I believe that the Constituent Assembly is the real authority to decide upon the units of the Union, and not the Chamber of Princes.

(ii)

*Shri K. M. Munshi's reply*

1. In para 14 of the Cabinet Mission's statement, it is stated that "the precise form which their (States') co-operation will take must be a matter for negotiating during the building up of the new constitutional structure, and it, by no means, follows that it will be identical for all the States."

This, in my opinion, pre-supposes that at some stage, each individual State will come to its own arrangement of co-operation with the Union.

2. Para 19 deals with the Constitution making machinery so as to provide "a representation of the whole population." Clause (ii) of Para 19, first refers to the final Constituent Assembly leaving the method of selection of States' Representatives to be determined by consultation. In the preliminary stage, however, the States would be represented by a Negotiating Committee.

Sub-clause (iii) of Clause 19 states that the representatives thus chosen shall meet at New Delhi. This meeting is called preliminary meeting in Sub-clause (iv). In my opinion, therefore, the words "representatives thus chosen" not only include the representatives of the Provinces, but also of all the members of the Negotiating Committee, and members thereof form part of the preliminary meeting. This is made clear within the same sub-clause when the representa-

tives of British India are referred to as 'Provincial Representatives'. In my opinion, therefore:—

(1) The Negotiating Committee must be chosen by the States individually, and not indirectly by the Chamber of Princes.

(2) The members of the Negotiating Committee should form part of the preliminary meeting. If I am correct, they will also participate in the election of the Chairman and other officers, and will be eligible to be appointed on various Committees, and the Advisory Committee in sub-clause (iv).

(3) The Negotiating Committee is a separate entity, and as such, will negotiate with the Constituent Assembly to devise the method of selection of the representatives of the opinion, therefore:

(a) The Chamber of Princes have no right to appoint a Negotiating Committee. It should have been chosen "by the States as a whole," as an electoral college.

(b) The Negotiating Committee has no right to discuss the terms of the States' participation in the final Constituent Assembly. It can only discuss the method of selecting representatives of the Indian States.

(c) It certainly cannot discuss the position of the States in the All-India Union, that can only be done by the representatives of the Sections, and Indian States meeting together in the final Constituent Assembly, under clause 19, sub-clause (vi).

(d) In my opinion, therefore, the members of the Negotiating Committee can take part in the preliminary meeting of the Constituent Assembly and be on the Committees of the Constituent Assembly.

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### RESOLUTION REGARDING ELECTION OF CONSTITUENT ASSEMBLY NEGOTIATING COMMITTEE<sup>1</sup>

#### (i)

Mr. K. M. Munshi (*Bombay: General*): Mr: Chairman, Sir, I beg to move the following Resolution:—

This Assembly resolves that the following members, namely,—

1. Maulana Abul Kalam Azad,

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1. C.A.D. 12-12-1946. Vol. I.



## ELECTION OF NEGOTIATING COMMITTEE

2. The Hon'ble Pandit Jawaharlal Nehru,
3. The Hon'ble Sardar Vallabhbhai Patel,
4. Dr. B. Pattabhi Sitaramayya,
5. Mr. Shankararao Deo, and

6. The Hon'ble Sir N. Gopalaswamy Aiyangar,  
do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

(a) determining the distribution of the seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) deciding the method by which the representatives of the States should be returned to this Assembly.

The Assembly further resolves that not more than three other members may be added to the Committee later and that they be elected by the Assembly at such time and in such manner as the President may direct.

This is more or less a formal motion for the simple reason that the Cabinet Mission's Statement as well as Lord Pethick-Lawrence's speech both contemplate that there should be a Committee appointed by this Assembly in order to negotiate with the States for the purposes mentioned in this Resolution. I may refer in this connection, Sir, to the recent remarks of Lord Pethick-Lawrence. Lord Pethick-Lawrence said—

“The manner in which the seats representing the States should be filled in the Constituent Assembly was to be negotiated between the Committee appointed by the Indian States and a Committee appointed by the British India side of the Constituent Assembly. The States had appointed the Committee and when the Committee has been appointed by the British India part of the Assembly, negotiations could begin.”

It is necessary, as the House will easily see, to begin these negotiations at the earliest possible date. It is for that reason that this Resolution has been placed before the House today. The number has been restricted at present to six because this Committee, having to deal with delicate negotiations, has to be as small as it possibly could be. Further the purposes, for which the Committee is being appointed, are fully set out in the Statement. I, therefore, commend this Resolution for the acceptance of the House.

(ii)

The Hon'ble Pandit Jawaharlal Nehru (*United Provinces: General*): Mr. Chairman, Sir, the Resolution that has been placed by Mr. Munshi before the House is a very limited Resolution. It is meant only to fix the method of representation in this Assembly for the representatives of the States, and not to deal with the innumerable problems which the States have in common with the rest of India. Mr. Lahiri mentioned the case of one or two States where political struggles are going on. Obviously, this Committee will have nothing to do with the internal structure of the States. That matter will have to be considered, I hope, by us when the States representatives come. We can confer with them and discuss and settle these matters; so we have for the present only to consider the method of their representation.

Now, Sir, the amendments that have been moved in regard to members of the Depressed Classes or the Adibasis coming in, seem to ignore the fact that we are only considering this limited problem. Obviously, the Depressed Classes have their particular interests to be protected, but that question does not come in before the Committee. This Committee representing, if I may say so, that part of India which is not the States, will meet representatives of the Rulers—I might say frankly that we have to meet the Rulers' Negotiating Committee. I think there should have been on the Negotiating Committee representatives of the peoples of the States, and I think even now that the Negotiating Committee, if it wants to do the right thing, should include some such representatives, but I feel that we cannot insist upon this at this stage. Unless we appoint a Committee to negotiate this matter the proper representation of the States' representatives may not be secured. Therefore, in this Resolution we have said not only that we shall meet the Negotiating Committee set up by the Chamber of Princes but also the representatives of other States who are probably not included therein, and as I have already explained, the object of our meeting them is to ensure a proper method of representation for the States people. If that is so, and if you try and think of the States as they are, you will see that apart from some States which are big, there will be many small States whom we may have to get represented by doing some kind of grouping or some other way of representing them, because for each State we may not be able to give one representative. Just see how many States there are and how many will be required. States like Hyderabad and Kashmir will get adequate representation on the population basis. Some of the big States may get two, three or four, but most of them just barely one. Many of them may not even get that one. We may have to group them

## ELECTION OF NEGOTIATING COMMITTEE

or devise some method. These are our problems. Apart from these, no other problem affecting any particular class or even affecting the internal structure of the States will come up before this Committee. Those problems will have to come up before this Assembly at a later stage, when the States representatives are also here.

I submit that the question of any particular group—communal, provincial or State—coming into this Committee will not arise. We should take, of course, competent men who are here, but in this particular matter you cannot enter into group representation, because if we do there is no particular reason why we should deny representation to the many separate interests that exist here. If you take the Travancore State, thinking only on religious lines, you will find that a very great part of the population of the State consists of Christians—Roman Catholics. Now, Travancore is a very important State, the people of which have often come into conflict with the Government authorities. Kashmir, of course, is another important State. In this way, you will get into enormous difficulty if you are going to think of people being represented on a communal basis in this small Committee. (Obviously, this Committee ought to be a small Committee because it will be very difficult to deal with the representatives of the Rulers if it is a large committee). This Committee should not, therefore, be formed on the basis of separate interests, as suggested by some people.

Now, Mr. Jaipal Singh made a statement, from which I beg to differ, and that is that the States Peoples' Conference is not taking sufficient interest in the Orissa States. The States Peoples' Conference has not done all that it should do because the problem is a vast one, but as a matter of fact the Orissa States have been frequently before the States Peoples' Conference and one of our members of the standing committee of the States Peoples' Conference comes from there.

Now, some of the amendments moved by Mr. Santhanam and others say that this final authority should remain with this House. They agree, however, to withdraw them if the Chair could give a ruling in this matter. I have no doubt in my mind that the final decision on such matters should vest in this House, and that this Committee should only be a Negotiating Committee, that it should negotiate and report to this House. If this House does not agree with anything that they have done, they have got to go back and negotiate still further. Of course, in all such matters, a certain discretion is given. For instance, you do give a large measure of authority to your plenipotentiaries to go and negotiate with other countries. The countries have got a right to accept or reject, but

normally speaking, when the representatives of two parties come together and discuss a matter and come to an agreement, unless a vital principle is involved, the agreement is accepted because third parties are concerned in it. That will apply to our case also. But I suggest, if possible, I have not the wording before me, that it might be possible to have some such words as that the Committee should report to the House.

(iii)

Mr. K. M. Munshi: Mr. Chairman, I made it abundantly clear when I moved the Resolution that whatever the result of the negotiations, it will be placed before the House and there is no reason to fear that this Committee will decide something which this House may not approve. Now that the Hon'ble Member, Diwan Chaman Lall, has moved an amendment making it quite clear that the report of this Committee will come before this House, I have no hesitation in accepting the amendment.

The second point made was that one Member of the Scheduled Classes should be added to the Committee. The Hon'ble Pandit Jawaharlal Nehru has replied to that point. This is not a representative committee of all sections and minorities. This is a small committee with very limited functions and only intended to negotiate on a certain basis. And the Committee's report will be placed before the House.

There was another point made by one Hon'ble Member over there (in the rear seats). He asked why it was necessary to state "to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States....." There is a valid reason why the Resolution has been worded in this manner. The Cabinet Mission has stated thus:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selecting will have to be determined by consultation. The States would, in the preliminary stage, be represented by a Negotiating Committee."

Therefore, it is the function if the Negotiating Committee representing the States to determine the representation. The House has been informed that a Negotiating Committee has been appoint-

## ELECTION OF NEGOTIATING COMMITTEE

ed by the Chamber of Princes. Neither the House nor I have any information as to whether the Committee that has been appointed by the Chamber of Princes represents all the States and whether all the States have agreed to treat the Negotiating Committee as their representative. Therefore, in conceivable circumstances it may become necessary for our Negotiating Committee not only to negotiate with the Negotiating Committee appointed by the Chamber of Princes, but also with individual States. That is the reason why the words have been used in the manner as in the Resolution. I therefore submit, Sir, that the amendment moved by the Hon'ble Member, Diwan Chaman Lal, may be accepted by the House.

An Hon'ble Member: I look at the question from a different point of view. A Negotiating Committee has been set up by the Chamber of Princes. If there are other representatives of the States, will they be in addition to those on the Negotiating Committee? I expected a reply from the Mover.

Mr. K. M. Munshi: I have made the position amply clear. We want to give our Negotiating Committee complete freedom to deal with the Negotiating Committee on the other side or with any individual States as they think proper. We do not want to fetter their right to come to any decision which they might think fit. The Resolution as it stands is very clear on this point.

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Mr. Chairman: Sub-para. (b) of the Resolution as amended would read thus:

“fixing the method by which the representatives of the States should be returned to the Assembly and thereafter to report to the Constituent Assembly the result of the negotiation”. The Resolution, with the amendment accepted by the Mover, Mr. K. M. Munshi, will read thus:

“The Assembly resolves that the following members, namely,—

- (1) Maulana Abul Kalam Azad,
- (2) The Hon'ble Pandit Jawaharlal Nehru,
- (3) The Hon'ble Sardar Vallabhbhai Patel,
- (4) Dr. B. Pattabhi Sitarammayya,
- (5) Mr. Shankarrao Deo, and
- (6) The Hon'ble Sir N. Gopalaswamy Aiyangar, do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

- (a) fixing the distribution of seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and
- (b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations.

The Assembly further resolves that not more than three other members may be added to the committee later and that they be elected by the Assembly at such time and in such manner as the President may direct".

Now, what about the other amendment of Mr. Lahiri?

Mr. Somnath Lahiri: In view of the fact that we will be able to consider the report of the negotiations and at that time press the claims of the States people, if they had not been fully realised, I withdraw the other amendment of mine.

Mr. Chairman: All the amendments have therefore been disposed of.

The Resolution, as amended, was adopted.

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RESOLUTION ON SIKKIM AND BHUTAN, JANUARY  
22, 1947<sup>1</sup>

Mr. President: We have got the next resolution relating to Sikkim and Bhutan. Pandit Jawaharlal Nehru will move this.

The Honourable Pandit Jawaharlal Nehru: Mr. President, Sir, I beg to move the following Resolution:

"This Assembly resolves that the Committee constituted by its Resolution of December 21, 1946 (to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for certain specified purposes) shall in addition have power to confer with such persons as the Committee thinks fit for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly the result of such examination."

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1. C.A.D., 22 January, 1947, Vol. II, pp. 324-25.

## RESOLUTION ON SIKKIM AND BHUTAN

May I point out, Sir, that the copy of this Resolution that has been circulated should be varied slightly in the penultimate line, to read, 'for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly....'

The House will remember that we passed a resolution in December last appointing a Committee consisting of Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Dr. Pattabhi Sitaramayya Mr. Shankarrao Deo, Sir N. Gopalaswamy Aiyangar and myself to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of:—

(a) fixing the distribution of the seats in Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of the States should be returned to this Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations.

Further it was resolved that not more than three other Members may be added to this Committee later. This Committee was to consider two matters, fixing and distribution of seats for States and fixing the method by which the representatives of the States should be returned to the Assembly. The question has arisen as to how we have to deal with certain areas which are not Indian States. In this Resolution before us, Bhutan and Sikkim are mentioned.

Bhutan is in a sense an independent State under the protection of India; Sikkim is in a sense an Indian State but different from the others. It is not proper to think of Bhutan therefore in the same category as an Indian State. I do not know what the future position of Bhutan might be in relation to India. That is a matter to be determined in consultation and in co-operation with the representatives of Bhutan. There is no question of compulsion in the matter. Now the terms of reference of the Committee you have appointed on the last occasion will not entitle it to tackle any such problem. Those terms are limited to the method of representation in this Assembly and the distribution of seats. I would like to say that there is some objection raised on the part of the Indian Princes to the Negotiating Committee as to why the terms of reference have been so limited by us. They have been limited for obvious reasons—that all the later problems of the Indian States are going to be dealt with by those representatives of Indian States when they come and it would be absurd for us to come to final decisions with regard to the

main problems before the representatives are here. Therefore deliberately we limited the functions of our Negotiating Committee. But in limiting them we prevented them from dealing with other problems which may rise in regard to territories which are not Indian States, specially Bhutan and Sikkim, and this Resolution gives them authority to meet representatives of Bhutan and Sikkim and discuss any special problems that may arise. I want to make it clear, on the one hand, that this Constituent Assembly has every right to discuss problems with even Independent States, if necessary. There is nothing to limit our right to discuss our future relations with the Independent States but for the moment I am not dealing with that problem. Whatever the position of Bhutan might be, there is no question that we have the power and authority to deal with their representatives. This is in no way trying to lessen the status of Bhutan's present position. Whatever this may be, it will be recognised to be something entirely different to that of Indian States. We are simply empowering our Committee to deal with the representatives and then to report to this Constituent Assembly the result of those negotiations.

I beg to move this Resolution, Sir.

The Hon'ble Pandit Govind Ballabh Pant (*United Provinces: General*): I second the Resolution.

Mr. President: The Resolution has been moved and seconded. If anyone wants to speak, he can do so. . . . (After a pause) May I take it that no one wishes to speak about this Resolution? I will put the Resolution to vote.

The Resolution was adopted.

LETTER FROM SHRI K. M. MUNSHI TO PANDIT JAWAHARLAL  
NEHRU, APRIL 3, 1947

26, Ridge Road,  
Bombay, April 3, 1947.

My dear Panditji,

On my arrival here some Princes and several Ministers contacted me. The position seems to be that Bhopal struggled to the last to postpone the decision but was forced to take a decision at the instance of the Rajputana Group, particularly H. H. Bikaner. It appears that what they want is that when the Report of the Negotiat-



LETTER—K. M. MUNSHI TO JAWAHARLAL NEHRU

ing Committee is placed before the Constituent Assembly it should also contain a sort of ratification of the fundamental points which you made clear in your speech to the joint Negotiating Committee.

The important point from our point of view, however, is that some of the States must join the Fundamental Rights, Union Powers, Minority and the Advisory Committees before the 28th. The way that I suggest and which has met with the approval of some friends is that after the 5th, Iengar should suggest to Bhopal about the names of the States Representatives on the Advisory Committee. It is expected that he will not send the names. On that it would be possible for Rajendra Babu to appoint the Princes' nominees on the Advisory and other Committees so that when we meet on the 14th May we may have some representatives of the States on these Committees.

What I am afraid of is that if our Report on the Fundamental Right and the Union Powers is placed before the public without the collaboration of at least some States, it will give a ground to Bhopal to move the Princes not to join the Constituent Assembly at all.

I am not writing separately to Dr. Rajendra Babu because I am not sure whether he is in Delhi.

With kindest regards from my wife and self.

Yours very sincerely,  
K. M. Munshi.

Hon'ble Pandit Jawaharlal Nehru,  
17, York Road,  
New Delhi.

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LETTER FROM SHRI K. M. MUNSHI TO PANDIT JAWAHARLAL  
NEHRU, APRIL 4, 1947

*Confidential*

26, Ridge Road,  
Bombay, April 4, 1947.

My dear Panditji,

After I wrote to you my last letter several others met me including H.H. Bikaner. The general feeling is that if Bhopal refuses to respond by the 5th of April and if direct invitations are sent

a large number of Princes will send their delegates and nominees on the Committees also. From what Bikaner told me it appears that his group now consists of Patiala, himself, Jaipur, Jodhpur, Gwalior, Udaipur, Alwar and Rewa.

Apart from what Bikaner told me some others also saw me from which it appears that the following are certain to join if invited:—

Udaipur, Cutch and the Deccan States.

I found from the talk with the Dewan of Cutch who saw me that Cutch would certainly be willing to come in immediately if invitation is sent.

As regards Indore, I learnt from Bikaner that he is still hesitating between him and Bhopal but is likely to join him.

With kindest regards,

Yours very sincerely,

K. M. Munshi.

Hon'ble Pandit Jawaharlal Nehru,  
17, York Road, New Delhi.

## PART TEN

### 63

#### ACCESSION OF THE STATES

##### (i)

*Text of the Resolution Passed at Meeting of the Princes held on  
January 29, 1947<sup>1</sup>*

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:—
  - (a) that the following fundamental propositions *inter alia* form the basis for the States' acceptance of the Cabinet Mission's plan—
    - (i) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.
    - (ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no ques-

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1. C.A.D. III, pp. 387, 88.

tion of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

- (iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.
- (iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.
- (v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy, "political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government. . . . . in British India, or failing this, entering into particular political arrangements with it."
- (b) That the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian constitutional structure as the States might entrust to it.
- (c) that while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States' representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

## ACCESSION OF THE STATES

2. This meeting—
  - (a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and
  - (b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.
3. This meeting resolves that, in accordance with this Resolution and the instructions and resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

(ii)

*Text of the Resolution Passed at a meeting of the Princes held in Bombay on April 2, 1947*

1. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rulers and representatives of States on January 29, 1947.
2. It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the States representatives to, the Constituent

Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 and on March 1 and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided that such participation is preceded by acceptance by the Constituent Assembly of the general understanding reached between the two Negotiating Committees in regard to the fundamental points and other matters referred to in the second resolution.
4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the Paramount Power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.
5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.
6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States' Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (b) with the Interim Government and the competent British Indian authorities in regard to matters referred to in paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of

the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committee and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

(iii)

*Report of the Committee appointed to negotiate with the States  
Negotiating Committee, April 24, 1947<sup>1</sup>*

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, viz.

- (1) The Hon'ble Pt. Jawaharlal Nehru
- (2) The Hon'ble Maulana Abul Kalam Azad
- (3) The Hon'ble Sardar Vallabhbhai J. Patel
- (4) Dr. B. Pattabhi Sitaramayya
- (5) Mr. Shankarrao Deo
- (6) The Hon'ble Sir N. Gopalaswamy Aiyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

- (a) fixing the distribution of the seats in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States.
- (b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report the result of such negotiation. By a further resolution passed on the 21st January 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

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1. C.A.D. III, p. 3974

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows:—

“The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission’s Statement. Apart from the legality of that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout.....

“Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it, we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

“Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had



no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's Statement specifically says. The Cabinet Mission's Statement said: 'The States will retain all subjects and powers other than those ceded to the Union'. That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States people, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest co-operation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during its April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, viz. that not less than 50% of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the

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quota of elected representatives to as much above 50% of the total number as possible. This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, viz., Hyderabad and Kashmir, elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Gopalaswamy Aiyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para 6 above and other matters of detail that might arise from time to time and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.

Jawaharlal Nehru.

A. K. Azad.

Vallabhbhai Patel.

N. Gopalaswamy.

Shankarrao Deo.

B. Pattabhi Sitaramayya.

New Delhi;  
24th April 1947.

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1. C.A.D. III, pp. 383-386.

(iv)

*Presentation of the Report of the Committee appointed to negotiate with the States Negotiating Committee by Pandit Jawaharlal Nehru<sup>1</sup>*

Mr. President: The next item is the Resolution which will be moved by Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (*United Provinces: General*): Sir, I beg to move:

"The Constituent Assembly, having taken the report of its States Committee into consideration, resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

I understand that copies of the Report have been circulated to all the Members; I shall not therefore take up the time of the House in reading that Report. That Report is a brief summary of the activities of the Negotiating Committee appointed by this House. We have tried to make it as precise a summary as possible and it shows what took place and what we did, so that the House may be acquainted with the procedure we adopted and all that was said on those occasions. I might add, however, that if it is the wish of the House and if Members desire to see a fuller report of our proceedings there is a verbatim Report in existence and this Report can be consulted in the Library of the House. I say this because sometimes all manner of rumours get about and people are misled and sometimes people imagine that we are not trying to put all the facts before the public. We have nothing to hide in this matter; indeed we could not possibly do so from this House; and therefore the verbatim Report of everything that was said on the occasions that we met with the Negotiating Committee of the Princes is available for reference to any Member of the House in the Library. It is too long a report for us to have it printed and circulated, nor is it normally desirable to have such reports published in the public press. But there can be no secret as between the Committee of this House and the Members of this House and therefore, while that document is not meant for publication, I should like to remind the Members that it is there to be consulted by any Members of this House in the Library.

The House will remember that this Committee was appointed for a specific purpose—for fixing the distribution of seats of the As-

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1. C.A.D. 28 April, 1947, Vol. III, p. 350.

sembly not exceeding 93, and for fixing the method by which the representatives of the States should be returned to the Assembly. These were the definite directions given to us and we proceeded accordingly, but when we met the Negotiating Committee appointed by the Chamber of Princes, other questions were raised. We were confronted by various resolutions passed by organizations of the Princes. We informed them that we had no authority to deal with any other matter. Our authority was limited to dealing with these two specific matters. Indeed we went a little further. We said we rather doubted the authority even of the Constituent Assembly to deal with all manner of other matters, that is to say, the Constituent Assembly as it is constituted at present. But in any event we were so anxious to get going, so anxious to remove any misapprehensions that might exist, that some of us had further conversations with them and some doubts that they raised were removed in the course of those conversations; some questions that were asked were answered informally, personally if you like, on our behalf because it was not open to us to go beyond the terms of the mandate that you gave us. You will see a reference to that in the Report that is presented to you, in particular because—I am bound to make this point perfectly clear—a few important points were raised by them in the course of those discussions. As it happened, what I said in reply to those questions had more or less been said by me in this House before or by other Members of this House, and therefore, I had no difficulty in saying it to them because otherwise I would have had this great difficulty in saying anything which the House might not approve, or might disapprove as wrong. All of us have certain views in this matter and on one of the occasions when I addressed this House in connection with the Objectives Resolution, I referred also to the States and to the Princes and made it clear that while I, in my individual capacity, held certain views, those views did not come in the way of my stating what the Constituent Assembly stood for, and what its range of activities was going to be. I said then that, while we were deciding in favour of a Republic for the whole of India, that did not bar any State from continuing the monarchical form of Government so far as that State was concerned, provided, of course, that they fitted in the larger picture of freedom and provided, as I hope, that there was the same measure of freedom and responsible government in the State. So when these questions were raised, I had no particular difficulty in answering them because in effect they had been mentioned in this House previously.

What were those questions? First, of course, was—it was an unnecessary question—as to the scope of our work, that is to say,

how far we accepted the Cabinet Mission's Statement of May 16, 1946. We have accepted it, and we are functioning in accordance with that statement. There the matter ends. I do not know what future changes may take place and how these changes might affect our work. Anyhow, we have accepted that Statement in its fullness and we are functioning accordingly.

That leads inevitably to another conclusion, viz., that such subjects, as did not come within the scope of the Union, were subjects to be dealt with by the Units—by the States and the Provinces—and that has been clearly laid down in the Cabinet Mission's Statement. So we said there and we made that clear. What the Union subjects might or might not be is a matter for careful consideration by this House now. But any subjects which did not come within the scope of the Union subjects necessarily are subjects left over to the Units.

Further it was stated that the business of joining the Constituent Assembly or accepting the Scheme or not accepting it was entirely their own. As Mr. Panikkar has pointed out, there was no coercion, there can be no coercion either to a State, a Province or to any other part of India, which is participating in this Assembly. There can be no coercion, except, of course, the coercion or compulsion of events and that is certainly a compelling factor and a very big factor which none of us can ignore. So there is no question of compulsion; but at the same time it is true that if certain units or parts of India decide to come in, accepting their responsibilities, they get certain privileges in return, and those who do not come in do not get those privileges as they do not shoulder those responsibilities. That is inevitable. And once that decision has been taken by a Unit, State or other, other consequences inevitably follow, possibly widening the gulf between the two—that is the compulsion of events. Otherwise it is open to any State to do as it chooses in regard to this matter of coming in or not coming in. So that matter has been made clear.

The only other important matter that was raised in this connection was the monarchical form of Government in the States. As I stated in this House previously, in the world today this system of rule by monarchy, whatever good it may have done in the past, is not a system that might be considered to be popular. It is a passing institution; how long it will last I do not know. But in this matter my opinion is of little account. What counts is what this Assembly desires in this matter: what it is going to do; and we have made it clear on a previous occasion that we do not wish to interfere in the internal arrangement of the States. It is for the people of the States to decide what they want and what they do not want. The

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question, in fact, does not arise in this Assembly. Here we are dealing with Union matters, subjects of fundamental rights and the like. Therefore, this question of the monarchical form of Government in the States did not arise here and I told them that so far as we were concerned we were not going to raise that particular subject here.

Lastly, there was the question or rather the misapprehension due to certain words in the Objectives Resolution of this Assembly, where some reference has been made to territorial boundaries being changed. The House will remember that that had no connection with the States as such. That was a provision for future adjustments as they are bound to be involved. Further it was a provision for suitable units to come into existence, which can be units of this Indian Union. Obviously one cannot have very small units or small fractions of India to form part of the Union. Some arrangement has to be made for the formation of sizable units. Questions arise today and will arise tomorrow even about the division of Provinces. There is very strong feeling about it. We are discussing today, though for other reasons, about the division of certain Provinces like the Punjab and Bengal. All these have to be considered but this has nothing to do with the provision in the Objectives Resolution. The point has been settled in the Negotiating Committee that any changes in territorial boundaries should be by consent.

Those were the statements I made on behalf of our Negotiating Committee to the other Committee and those statements removed a number of misapprehensions and we proceeded ahead with the consideration of other matters.

Among the other matters was, firstly, the question of the distribution of seats. We decided to refer this matter to the two Secretariats—the Secretariat of the Constituent Assembly and that of the Chamber of Princes. We referred this matter, I think, at 1-30 P.M. one day. Those two Secretariats met, I think, at 3 P.M. the same day and by 5 P.M. they arrived at an agreed procedure. That was rather a remarkable thing which is worth remembering. It is true that the rules governing the distribution were to some extent laid down in the Cabinet Mission's Scheme—one seat per million, that is 93 seats in all. Unfortunately, these matters of distribution are difficult and often arouse great controversies and arguments. Nevertheless these two Committees met together and I am very glad that the Secretariat of the Constituent Assembly was helped by the representatives of the States to come to an agreed solution within two hours. That showed that if we approach any of these apparently difficult problems with good-will, we find so-



lutions and we find rapid solutions too. I do not mean to say that that solution in regard to the distribution of these seats was a perfect one. Since the agreement was reached certain objections have been raised and criticisms have been made in regard to the grouping of the States here and there. Ultimately we left it to a sub-Committee—a joint Committee of our Negotiating Committee and the States Negotiating Committee—to consider this matter and to make such minor alterations as they thought fit and proper. Now because of those grouping difficulties, a number of States which might be represented here are not here. That is to say, the States concerned want to come in and they are quite prepared to do so but the group has not begun to function. Therefore, individually they are prevented from coming in. Only yesterday I was informed that one important State, the State of Cutch, was eager and anxious to come in but they formed part of a group of Kathiawar and other States, rightly or wrongly, and till the whole group gets into motion, they do not know how to come in separately. This is a matter to be considered by the sub-Committee. But the point I want to put before the House is this that in this matter as soon as we came to grips with the subject and gave up talking in vague generalities and principles or rights of this group and that group, we came to a decision soon enough and that is a good augury for our work in future, whether it relates to the people of the States or to the rest of India or to any group in India.

We, who meet here, meet under a heavy sense of responsibility—responsibility not only because the task which we have undertaken is a difficult one or because we presume to represent vast numbers of people, but because we are building for the future and we want to make sure that that building has strong foundations, and because, above all, we are meeting at a time when a number of disruptive forces are working in India pulling us this way and that way, and because, inevitably and unfortunately, when such forces are at work, there is a great deal of passion and prejudice in the air and our whole minds may be affected by it. We should not be deflected from that vision of the future which we ought to have, in thinking of the present difficulties. That is a dangerous thing which we have to avoid, because we are not building for today or tomorrow, we are making or trying to make a much more enduring structure. It is a warning which the House will forgive me if I repeat—that we must not allow the passion and prejudice of the moment to make us forget what the real and ultimate problems are which we have to solve. We cannot forget the difficulties of the present because they come in our way all the time. We have to deal with the problems of the present, and in dealing with them, it may



be, unfortunately, that the troubles we have passed through all these years may affect us, but, nevertheless, we have to get on. We have to take quick decisions and final decisions in the sense that we have to act on them. We have to be realists and it is in this spirit of realism, as also in a spirit of idealism, that I say that our Negotiating Committee approached this task.

The House knows that some of the members of the Committee have been intimately associated with the struggle of the peoples of the States for their freedom. The more I have been associated with that struggle, the more I have seen that it cannot be separated from the all-India problem; it cannot be isolated. It is an essential and integral part of the all-India problem, all-India structure, just as the States are an integral part of India. You cannot separate them. And with all my anxiety to further the progress of the peoples of the States with such strength as is in me in my individual or other capacities, when I met the Negotiating Committee I had to subordinate my individual opinions because I had to remember all the time that I was representing this Constituent Assembly. I also had to remember that, above all, we had gone there not to bargain with each other, not to have heated argument with each other, but to achieve results, and to bring those people, even though they might have doubts, into this Assembly, so that they might come here and they might also be influenced by the atmosphere that prevails here. For me it was the solemnity of the task which we had undertaken, and not to talk in terms of results or individuals or groupings, or assurances. What assurance do we seek from each other? What assurance is even this House going to give to anybody in India, except the assurance of freedom? Even that assurance will ultimately depend on the strength and wisdom of the Indian people afterwards. If the people are not strong enough and wise enough to hold together and proceed along the right path, the structure that you have built may be shattered. We can give no assurance to anybody.

With what assurance have we fought for freedom for India all these years? We have looked forward to the time, when some of the dreams that we were indulging in might become true. Perhaps, they are coming true, perhaps not exactly in the shape that we want, but, nevertheless, they will come true. It is in that conviction that we have proceeded all these years. We had no guarantees. We had no assurances about ourselves or about our future. Indeed, in the normal course of events the only partial guarantee that most of us had was the guarantee of tears and troubles, and we had plenty of that. It may be that we shall have plenty of that in

the future too; we shall face them. This House will face it and the people of India will face it. So, who are we to give guarantees to anybody? But we do want to remove misapprehensions as far as possible. We do want every Indian to feel that we are going to treat him as an equal and brother. But we also wish him to know that in the future what will count is not so much the crown of gold or of silver or something else, but the crown of freedom, as a citizen of a free country. It may be that a time may come soon when it will be the highest honour and privilege for anybody, whether he is a Ruler or anybody else, to be a free citizen of a free India and to be called by no other appellation or title. We do not guarantee because we guarantee nothing to anybody, but that is the thing which we certainly hope to achieve and we are certain to achieve. We invite them to participate in that. We welcome those who have come, and we shall welcome those others when they come. And those who will not come—we shall say nothing about them. But, as I said before, inevitably, as things are, the gulf will widen between those who come and those who do not come. They will march along different paths and that will be unfortunate. I am convinced that, even so, those paths will meet again, and meet sooner rather than later. But, in any event, there is going to be no compulsion. Those who want to come, will come, and those who do not want to come, do (sic) not come. But there is this much to be said. When we talk about people coming in and people who do not come in, let it be remembered, as Mr. Govinda Menon said, that the people of the States—I say with some assurance and with some authority in the matter—want to come into this Assembly, and if others prevent them from coming it is not the fault of the people, but brakes and barriers are put in their way. However, I hope that these questions will not arise in the future and that in the coming month or two nearly all the States will be represented here, and, jointly we shall participate in the final stages of drawing up the Constitution.

I am placing this Resolution before the House to record the Report. There has been some argument about this matter too and people attach a great deal of importance to words and phrases and assurances and things like that. Is it not good enough that I have put it to the House? If it is not good enough, I may repeat what has been stated. Even if that is not good enough, what we have stated is there in the verbatim Report of the meetings; we have nothing to add to it, we shall stand by that. We do not go back. But the procedure to be adopted must be a correct procedure. When this Committee was appointed you asked us to report and we have reported. We had got to do something, and we tried to do that and did it. Now, if this matter was to come up for ratification before this

House before it could be acted upon, obviously, representatives of the States who are here now would not have been here. They would have been sitting at the door-step or somewhere outside waiting for ratification, waiting for something to happen till they came in. That was not the way in which we understood our directions. We understood that we had to come to some honourable agreement and act up to it so that representatives of the States might come in as early as possible. We were eager in fact that they should join the Committees of this Assembly—the Advisory Committee, the Fundamental Rights Committee, the Union Powers Committee and the other Committees which we have formed. It is not our fault that there was delay. At the very first joint meeting of the Negotiating Committees we requested the States Committee to join quickly, indeed to send their representatives to these Committees of the Constituent Assembly as soon as possible. We were asked for assurance at every stage and there were delays. But the way we have understood your mandate was that we had to go ahead and not wait for ratification of every step that we had taken. We acted accordingly, and I am happy that some of the States' representatives are here today and I hope more will come. So the question of ratification does not arise so far as this Committee's work is concerned. The Report is before you. If you disapprove of any single step that we have taken, express your disapproval of whatever might have happened, or otherwise give your directions.

The resolution I have moved is for your adoption. I shall not go into the details in regard to the distribution of the seats and the manner of selection of the delegates from the States. It was a sort of compromise. Naturally it was my desire, as it was the desire of my colleagues, that the representatives of the States should be elected by the people of the States, partly because it was the right way, and partly because it was the way in which they could be fitted in with the other elected elements of this House. On the other hand, I considered it right and desirable that the States governments should also be represented here to bring reality to the picture. The correct way and the right way ultimately will be for the State government itself to be representative of the people and then come in to represent them here. But we have to take things as they are. The State Governments, generally speaking, do not represent the people in the democratic sense. In some places they partially represent them. Anyhow, we did consider it desirable that the State Governments as such, should also be represented though we would have liked the largest number of representatives to come from the people. Ultimately, after a great deal of discussion it was decided that not less than 50 per cent of the representatives should be

elected by the elected members of the Assemblies where they exist, or by some other method of election which may be devised. We came to a compromise on this proportion, though we would have liked the proportion to be higher. Some of the States have actually acted as if the proportion were higher. I submit that this compromise that we came to was an honourable compromise for all parties concerned and I think it will lead to satisfactory results so far as this House is concerned, and I commend the Resolution to the House.

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Mr. President: Mr. Lahiri desires to know when notice of amendments should be given. He complains that notice of this Resolution was received by him last night. I am afraid it is now too late for him to give notice of amendment.

I shall now put the Resolution to the House:

The question is:

"The Constituent Assembly having taken the report of its States Committee into consideration resolve that it be recorded.

The Assembly welcomes the States' representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

The motion was adopted.

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### PANDIT JAWAHARLAL NEHRU ON PARAMOUNTCY<sup>1</sup>

*Speech at the All-India Congress Committee, New Delhi,  
June 15, 1947*

We will not recognise any independence for any State in India. Further, any recognition of such independence by any foreign Power, whichever it may be and wherever it may be, will be considered an unfriendly act.

There is a great deal of talk about Independence and Paramountcy, etc. Independence does not depend on a mere declaration by anybody, but on various factors—foreign relations, defence, etc. It depends fundamentally on the acknowledgement, by other parties, of that independence.

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1. *Indian Annual Register*, Vol. I, January-June 1947, pp. 137-38.

The Paramountcy of the British Crown arose in India in certain circumstances. I need not go into the history of it but it depends on geography, on history and all manner of factors like defence, security, etc.

So far as we are concerned, we do not agree with the doctrine of paramountcy as it has been declared, especially during the last dozen years, by the British Government. You will remember that this business of a Crown Representative came into existence only a dozen years ago. Paramountcy has been exercised ever since the British became a leading Power in India, first by the East India Company and then later by the Government of India that succeeded it. No doubt the Crown was behind it. There was no division in the Government of India, as between that part which dealt with the Indian States and that part which dealt with the rest. The whole of the Government of India dealt with the Indian States. The distinction came in only a dozen years ago with the Act of 1935.

When there was some talk of a Federation in India, the Butler Committee and others began to talk of paramountcy vesting in the Crown, so that it was a new thing. We did not agree with that but I am not going into that question now.

As paramountcy vests in the British Crown, the British Crown ceases to exercise it; it lapses, or if you like, it returns to the States. But there is a certain inherent paramountcy in the Government of India which cannot lapse—an inherent paramountcy in the dominant state in India which must remain because of the very reasons of geography, history, defence, etc., which gave rise to it when the British became the dominant power in India. If anybody thinks that it lapses, then those very reasons will give rise to it again.

It must exist, or the only alternative to it is that the various States in India should in groups, or otherwise, join the Federation or the Indian Union. Then, of course, there is no paramountcy, because presumably they join as autonomous and equal units in that Union and they share equally in the Union Legislature and the Union Executive. Presuming, of course, that those units are proper units, economic units, big enough units of the Federation, they have the same position in the Federation as any other unit like a province. Probably in the independent Indian Union there will be no distinction between a province as such and an Indian State as such, but all will be States of the Union or whatever name may be given to them, so that over all those who are equal members of the Union no question of paramountcy arises.

For those who do not join, the question of paramountcy inevitably arises, because they cannot live in a void. In the declara-

tion of May 16 it was clearly laid down that the Indian Union would consist of the provinces and the States. It was not envisaged that any State could remain outside the Union, though it is true that a State was given a certain power, if you like, a certain freedom, to decide how to come in. But it was not envisaged that it could keep out ultimately. In the Memorandum of May 12 it was stated clearly that the States should either join the Indian Union—that was the primary thing—or, if they did not do so, they must come to some other arrangement with the Union. There is no third way out of the situation, third way meaning independence or special relation with a foreign power.

If a State does not join the Union, there will have to be some relationship with the Union and its relationship will be not one of equality but slightly lower. The relationship between the two will be that of a certain suzerain power exercising a certain measure of paramountcy and a certain other State having autonomy but within the limitations of paramountcy and suzerainty.

We desire no suzerainty or paramountcy. We want freedom for all the people of India but it may be that for a particular period, the interim period, before other arrangements can be made and before some of the States can come into the Union, we may carry on negotiations with them on a more or less standstill basis, all these existing arrangements continuing because, if the arrangements do not continue, then there is chaos. Of course they will not continue if the States themselves take up any aggressive attitude, going beyond those arrangements.

These arrangements cannot possibly admit of the right of a State to any contact with any foreign State or in regard to the right of any independent authority to do what it would. All that is not because we wish to interfere with the States—of course we wish the people of the States well—but for another fundamental reason, that these matters affect the security of India. And we cannot permit anything to happen in India in any State which affects fundamentally the security of India, either in relation to defence arrangements or in relation to contact with foreign powers. Therefore I want this not only to be realised by the States but I want other countries and powers to realise and appreciate the situation.

The considerations of security and other interests which the Indian Union must have in every State in India cannot be overridden by any unilateral declaration of a State, and therefore, any foreign Power which takes an action on the basis of that unilateral declaration will be ignoring our special interests and doing an

unfriendly act to us. I am quite sure that any Government of India that comes into existence two months later will feel that way and will act that way.

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SHRI ALLADI KRISHNASWAMY AYYAR ON NATIVE STATES  
*Letter to Pandit Jawaharlal Nehru, dated June 16, 1947*

In continuation of my note, which I handed up to you, on the point that, in circumstances that have happened, in spite of impending constitutional changes, the identity and continuation of India is preserved and perpetuated in the Dominion of India that is to be and in the independent Union of India and that Pakistan must be treated as a territory or State carved out of India, I am herewith sending you an extract from Dr. Hershey's Book on "International Public Law and Organisation" (1927, p. 220):

"The main difference between the two categories of universal and partial succession is that, in the case of partial succession, whether by cession or conquest, there is a continuity of State life or personality on the part of the State which has lost a portion of its territory. This materially affects international rights, interests and obligations.

"In such cases, it may be necessary to distinguish between the general rights and obligations of the ceding or dismembered State and the special or local rights and obligations of the inhabitants of the ceded territory. This distinction also applies to the case of a colony or province which has achieved its independence. There may be certain charges or burdens in the nature of servitude resting upon the land or the assets, revenues, resources of the new State or ceded province may have been mortgaged or hypothecated as security for the payment of a portion of the public debt of the ceding or dismembered State.

"It is generally agreed that the purely local or personal rights and obligations of the ceded or conquered territory, as also those of the new State which has achieved its independence, remain with the new State or ceded territory. This is particularly true of the public domain, public property, such as Government railways and of purely local and personal debts or of any portion of the public debt which may have been contracted in the interest of the new State or ceded province, more particularly for internal improvements."



The passage above quoted would, you notice, equally apply to what has happened in the matter of separation of Pakistan from the rest of India. You would of course have perceived that there is a lurking danger in this argument that, in the matter of the allocation of international liabilities, India would continue to be primarily liable, whatever may be the adjustment as a matter of arrangement between India and the Part separated. The name of the Dominion, the form which the amendment of the Constitution would take, would also be material factors and would have to be carefully watched.

On the position of the Indian States and the question of paramountcy and the incidence of the latter developing upon India, there is a very learned discussion in Sir Sivaswamy Iyer's "Indian Constitutional Problems" (1928), though, unfortunately, the Butler Committee did not accept the position advocated there. I would refer you to pp. 211-214. I have extracted below, especially a portion which you may find useful:

"....as regards the question with whom Indian Princes have entered into treaties, it is not correct to say that the treaties were entered into with the Crown irrespective of the sovereignty of British India.

"....The Crown acted not in a personal capacity or in the capacity of Ruler of British India. If analogous conceptions may be suggested from the sphere of private law, the rights and obligations under the treaties are in the nature of covenants running with the land or predial servitudes.

"....The matters governed by the treaty relate to persons and things in India and arise out of the relations of the Princes with the Sovereign of British India and it would be an unthinkable constitutional absurdity that the right to enforce the treaties should vest not in the authorities for the time being charged with the administration of India but in some other authority."

In the footnote he points out that his opinion is at variance with that held by some British lawyers. Unfortunately, as you know, when the 1935 Act was passed, the Princes were able to secure influential legal opinion in England, in their support. Sir Stafford has followed up the British view by his recent ill-considered expression of opinion at the time of the Cabinet Mission Plan. Even in regard to responsible government in the States, the case is most forcibly put by Sir Sivaswamy Iyer, a moderate politician but a most straightforward and honest public man<sup>1</sup>.

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1. From a copy in Munshi Papers.



DR. B. R. AMBEDKAR ON PARAMOUNTCY AND INDIAN STATES, JUNE, 1947<sup>1</sup>

"The only way by which the Indian States can free themselves from paramountcy is by bringing about a merger of sovereignty or suzerainty. This can happen only when the Indian States join the Indian Union as Constituent Units", says Dr. B. R. Ambedkar, former member of the Viceroy's Executive Council and a leading constitutional lawyer, in a statement opposing the declaration of independence by certain Indian States. The Indian States, Dr. Ambedkar says, will be sovereign to the extent they are, but they cannot be independent so long as they remain under the suzerainty, as they must, of the Crown, if India remains a dominion, or of the succession state, if India becomes independent.

"The states should realise", he adds, "that their existence as sovereign independent states will not be worth five years' purchase." Dr. Ambedkar goes on, "The basis of the claim made by the States for a right to declare themselves independent lies in the statement of 12th May, 1946, issued by the Cabinet Mission in which they say that the British Government could not and will not in any circumstances transfer paramountcy to an Indian Government, which means that the rights of the states which follow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States.

*Mischievous Doctrine*

"The doctrine that paramountcy cannot be transferred to an Indian Government is a most mischievous doctrine and is based upon an utter misunderstanding of the issues involved.

"After the passing of the Statute of Westminster which carved out Canada, Australia, South Africa and Ireland as separate Dominions, the Crown, in the exercise of its prerogative rights, acts on the advice of the Cabinet of the Dominion concerned. It is bound to do so. It cannot do otherwise. It follows that when India becomes a Dominion, the Crown will be bound to act, in the exercise of its prerogative rights, namely Paramountcy, on the advice of the Indian Cabinet.

"The protagonists of the theory that Paramountcy cannot be transferred to the Government of India rely on the omission from the Government of India Act 1935, of the provisions of Section 39 of the Government of India Act 1883 (they were India Act 1915-19),

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1. Times of India, June 18, 1947.

according to which the civil and military Government of India (as distinguished from the civil and military Government of British India) is vested in the Governor-General-in-Council and argue that the omission is evidence in support of the conclusion that Paramountcy could not be transferred to an Indian Government. To say the least, the argument is puerile.

"Under the constitutional law of the Empire, it is only when a country has become a Dominion that it can claim the right to advise the Crown, and the fact that before it became a Dominion the Crown was differently advised is no bar to its claim. The fact that the Government of India was not in the past permitted to advise the Crown in the exercise of its rights of paramountcy does not mean that there is any inherent constitutional incapacity which disentitles her from claiming the right to advise.

*Paramountcy cannot Lapse*

"So far I have dealt with one part of the Cabinet Mission's statement where they say that the Crown could not transfer paramountcy to an Indian Government. There remains for consideration the other part of their statement in which they say that the Crown will not transfer paramountcy to an Indian Government. According to the Cabinet Mission, paramountcy will lapse. This is a most astounding statement and runs contrary to another well-established principle of constitutional law. According to this principle, the King cannot surrender or abandon his prerogative rights. If the Crown cannot transfer paramountcy the Crown cannot also abandon it. The validity of this principle was admitted by the Privy Council in "The Queen Vs. Edulji Byramji" case decided in 1840 and reported in 5 Moore's Privy Council Cases (p. 276) wherein they said (p. 294) that the crown could not even by charter part with its prerogative. It is therefore obvious that the statement made by the Cabinet Mission that the Crown will not exercise paramountcy is contrary to the constitutional law by which the Empire is governed.

*Ultimate Sanction*

"Again, a statute passed by the Parliament of Great Britain abrogating paramountcy would be improper. The reason is obvious. The army is the ultimate sanction for paramountcy. This army has been the Indian Army for which British India has paid all along. Without the aid of this powerful army maintained by British India and placed at the disposal of the Crown through his agent the Viceroy and Governor-General of India, the Crown would

never have been able to build up and conserve the powers of paramountcy. These powers are of the nature of a trust held by the Crown for the benefit of the people of India and it would be a gross abuse of power on the part of the British Parliament to pass a statute destroying that trust."

Dr. Ambedkar in conclusion says: "Whatever the choice the Indian states may make, the duty of the people is clear. On their behalf, the Indian Government should notify His Majesty's Government that the British Parliament has no right to pass any law abrogating paramountcy and that any clause to that effect in the forthcoming legislation—conferring Dominion status on Indian—should be treated by the people of India as repugnant to their sovereignty and therefore null and void, and to declare that the Government of India will never recognise any Indian State as sovereign or independent."

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SARDAR VALLABHBHAI PATEL ON INDIAN STATES,  
JULY 5, 1947<sup>1</sup>

It was announced some days back that the Government of India had decided to set up a Department to conduct their relations with the States in matters of common concern. This Department has come into being today and the States have been informed to this effect. On this important occasion I have a few words to say to the Rulers of Indian States among whom I am happy to count many as my personal friends.

It is the lesson of history that it was owing to her politically fragmented condition and her inability to make a united stand that India succumbed to successive waves of invaders. Our mutual conflicts, and internecine quarrels and jealousies have in the past been the cause of our downfall and our falling victims to foreign domination a number of times. We cannot afford to fall into those errors or traps again. We are on the threshold of independence. It is true that we have not been able to preserve the unity of the country entirely unimpaired in the final stage. To the bitter disappointment and sorrow of many of us some parts have chosen to go out of India and set up their own Government. But there can be no question that despite this separation a fundamental homogeneity of culture and sentiment reinforced by the compulsive logic of mutual

1. White Paper on Indian States (Government of India Press, New Delhi, July 1948) pp. 47-8.

interests would continue to govern us. Much more would this be the case with that vast majority of States which, owing to their geographical contiguity and indissoluble ties, economic, cultural and political, must continue to maintain relations of mutual friendship and co-operation with the rest of India. The safety and preservation of these States as well as of India demand unity and mutual co-operation between its different parts.

When the British established their rule in India they evolved the doctrine of paramountcy which established the supremacy of British interest. The doctrine has remained undefined to this day, but in its exercise there has undoubtedly been more subordination than co-operation. Outside the field of paramountcy there has been a very wide scope in which relations between British India and the States have been regulated by enlightened mutual interest. Now that British rule is ending, the demand has been made that the States should regain their independence. In so far as paramountcy embodied the submission of States to foreign will, I have every sympathy with this demand, but I do not think it can be their desire to utilize this freedom from domination in a manner which is injurious to the common interests of India or which militates against the ultimate paramountcy of popular interests and welfare or which might result in the abandonment of that mutually useful relationship that has developed between British India and Indian States during the last century. This has been amply demonstrated by the fact that a great majority of Indian States have already come into the Constituent Assembly. To those who have not done so, I appeal that they should join now. The States have already accepted the basic principle that for Defence, Foreign Affairs and Communications they would come into the Indian Union. We ask no more of them than accession on these three subjects in which the common interests of the country are involved. In other matters we would scrupulously respect their autonomous existence.

This country with its institutions is the proud heritage of the people who inhabit it. It is an accident that some live in the States and some in British India, but all alike partake of its culture and character. We are all knit together by bonds of blood and feeling no less than of self-interest. None can segregate us into segments; no impassable barriers can be set up between us. I suggest that it is therefore better for us to make laws sitting together as friends than to make treaties as aliens. I invite my friends, the Rulers of States and their people to the Councils of the Constituent Assembly in this spirit of friendliness and co-operation in a joint endeavour,

## ADDRESS BY THE VICEROY TO THE CHAMBER OF PRINCES

inspired by common allegiance to our motherland for the common good of us all.

There appears a great deal of misunderstanding about the attitude of the Congress towards the States. I should like to make it clear that it is not the desire of the Congress to interfere in any manner whatever with the domestic affairs of the States. They are no enemies of the Princely order, but, on the other hand, wish them and their people under this aegis all prosperity, contentment and happiness. Nor would it be my policy to conduct the relations of the new Department with the States in any manner which savours of the domination of one over the other; if there would be any domination, it would be that of our mutual interests and welfare. We have no ulterior motive or selfish interests to serve. Our common objective should be to understand each other's point of view and come to decisions acceptable to all and in the best interest of the country. With this object, I propose to explore the possibility of associating with the administration of the new Department, a Standing Committee representative of both the States and British India.

We are at a momentous stage in the history of India. By common endeavour we can raise the country to a new greatness while lack of unity will expose us to fresh calamities. I hope the Indian States will bear in mind that the alternative to co-operation in the general interest is anarchy and chaos which will overwhelm great and small in a common ruin if we are unable to act together in the minimum of common tasks. Let not the future generation curse us for having had the opportunity but failed to turn it to our mutual advantage. Instead, let it be our proud privilege to leave a legacy of mutually beneficial relationship which would raise this sacred land to its proper place amongst the nations of the world and turn it into an abode of peace and prosperity.

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## ADDRESS BY HIS EXCELLENCY THE VICEROY, LORD MOUNTBATTEN, TO A SPECIAL MEETING OF THE CHAMBER OF PRINCES, JULY 25, 1947<sup>1</sup>

It is a great pleasure and a great privilege for me to address so many Rulers, Dewans and representatives of the States of India in this historic Chamber of Princes. It is my first and last occasion

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1. *Time only to Look Forward*: Speeches by Earl Mountbatten of Burma 1947-8 (Nicholas Kaye, London, 1949), pp. 51-6.

that I have the privilege of addressing you as Crown Representative.

I would like to begin by giving you a very brief history of the negotiations I have conducted since I have been out here and the line that I have taken up about the States.

There were two distinct problems that faced me. The first was how to transfer power to British India and the second, how to fit the Indian States into the picture in a manner which would be fair and just to all concerned.

I dealt first with the problem of British India, because you will realise that until that problem was solved it was quite useless to try to start on a solution of the problem of the States. So I addressed my mind to that.

\* \* \* \*

There was a universal acceptance among the States of the Cabinet Mission's Memorandum of May 12th and when the parties accepted my Statement of June 3rd they fully realized that withdrawal of paramountcy would enable the States to regain complete sovereignty. That gave me a starting point from which to try and deal fairly with the States.

\* \* \* \*

But before I got down to dealing with the States there was one other thing that I clearly had to do. I had to address myself to the problem of the mechanics of partition—a plan against my personal desires. As you all know, it took three years to separate Burma from India, in spite of the fact (as I can testify, as also His Highness of Bundi and others) that there are no roads running between India and Burma. Nevertheless, it took three years to arrange that partition. It took two years to separate the province of Sind from Bombay. It took two years to separate the province of Orissa from Bihar. Gentlemen, we decided that in less than 2½ months we shall have to go through the partitioning of one of the biggest countries in the world with 400 million inhabitants. There was a reason for the speed. I was quite certain that while the British overlordship remained no satisfactory conclusions could be reached psychologically between the parties. So once we got the two Governments set up and separated, they would be able to try and finish off the details in an atmosphere of goodwill.

Now, the Indian Independence Act releases the States from all their obligations to the Crown. The States have complete freedom—technically and legally they are independent. Presently I will discuss the degree of independence which we ourselves feel is best in the interests of your own States. But there has grown up during the period of British administration, owing to the fact that the

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Crown Representative and the Viceroy are one and the same person, a system of co-ordinated administration on all matters of common concern which meant that the sub-continent of India acted as an economic entity. That link is now to be broken. If nothing can be put in its place, only chaos can result, and that chaos, I submit, will hurt the States first—the bigger the State the less the hurt and the longer it will take to feel it—but even the biggest of the States will feel itself hurt just the same as any small State. The first step was to set up some machinery by which it was possible to put the two future Governments of India—The Dominions of India and Pakistan—into direct touch with the States. So we conceived the scheme of setting up two States Departments within the future Governments. Please note that these States Departments are not the successors of the Political Department. They have been set up simultaneously and side by side. While the Political Department exercised functions relating to paramountcy on behalf of the Crown Representative, the States Departments are to take over those subjects gradually which have nothing to do with paramountcy but which will be concerned with relations with neighbouring States and also provide the machinery to negotiate in such matters. In India the States Department is under the admirable guidance of Sardar Vallabhbhai Patel with my own Reforms Commissioner Mr. V.P. Menon as Secretary. In Pakistan the Department is under Sardar Abdur Rab Nishtar with Mr. Ikramullah as the Secretary. It was necessary to set up two States Departments, one in each Government, because the States are theoretically free to link their future with whichever Dominion they may care. But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded. Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India. The problem therefore is of far greater magnitude with the Dominion of India than it is with Pakistan. In the case of Pakistan the States, although important, are not so numerous, and Mr. Jinnah, the future Governor-General of Pakistan, is prepared to negotiate the case of each State separately and individually. But in the case of India where the overwhelming majority of the States are involved, clearly separate negotiation with each State is out of the question.

The first step that I took was to suggest that in the Bill before Parliament—the Indian Independence Act—a clause should be put in which would enable certain essential agreement to continue until renounced by either side. That was only done to ensure that there should be some continuity and to see if in the short time



available it was not possible to get the agreement through with every State representative. It does not replace the need for Stand-still agreements; it gives a very slight breathing space.

Now, I think it is no exaggeration to say that most Rulers and Dewans were apprehensive as to what their future would be when paramountcy lapsed. At one time it appeared that unless they joined the Constituent Assembly and accepted the Constitution when it was framed, they would be outside the organization and left in a position which, I submit, if you think it over carefully, no State could view with equanimity—to be left out having no satisfactory relations or contacts with either Dominion Government. You can imagine how relieved I was, and I am sure you will yourselves have been equally relieved, when Sardar Vallabhbhai Patel on taking over the States Department made, if I may say so, a most statesmanlike statement of what he considered were the essentials towards agreement between the States and the Dominion of India.

Let us turn for one moment to the Cabinet Mission Plan of 16th May 1946. In this Plan the proposal was that the States should surrender to the Central Government three subjects—Defence, External Affairs and Communications. That was a plan which, to the best of my belief, every Ruler and every State accepted as reasonable, fair and just. I talked with so many Rulers and everyone felt that Defence was a matter that a State could not conduct for itself. I am not talking of internal security but of defence against external aggression. I submit, therefore, that, if you do not link up with one or the other of the Dominions, you will be cut off from any sources of supplies of up-to-date arms or weapons.

External Affairs is inextricably linked up with Defence. External Affairs is something again which is outside the boundaries of India in which not even the greatest State can operate effectively. You can hardly want to go to the expense of having Ambassadors or Ministers or Consuls in all these foreign countries; surely you want to be able to use those of India and Pakistan. Once more I suggest that External Affairs is something that you have not dealt with since the formation of the East India Company. It would be difficult to operate and will also be a source of embarrassment for you to have to take it up and it can only be managed by those who manage the defence of the country. I submit that if you take it up it will be a liability and not an asset.

The third subject is Communications. Communications is really a means of maintaining the life-blood of the whole sub-continent. I imagine everybody agrees that the country has got to go on. The



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continuity of Communications is already provided for to a certain extent in the Indian Independence Act; and most of the representatives here have come to discuss it as item 2 on the agenda.

Therefore I am sure you will agree that these three subjects have got to be handled for you for your convenience and advantage by a larger organization. This seems so obvious that I was at a loss to understand why some Rulers were reluctant to accept the position. One explanation probably was that some of you were apprehensive that the Central Government would attempt to impose a financial liability on the States or encroach in other ways on their sovereignty. If I am right in this assumption, at any rate so far as some Princes are concerned, I think I can dispel their apprehensions and misgivings. The draft Instrument of Accession which I have caused to be circulated as a basis for discussion (and not for publication) to the representatives of the States provides that the States accede to the appropriate Dominion on the three subjects only without any financial liability. Further, that Instrument contains an explicit provision that in no other matters has the Central Government any authority to encroach on the internal autonomy or the sovereignty of the States. This would, in my view, be a tremendous achievement for the States. But I must make it clear that I have still to persuade the Government of India to accept it. If all of you will co-operate with me and are ready to accede, I am confident that I can succeed in my efforts. Remember that the day of the transfer of power is very close at hand and, if you are prepared to come, you must come before the 15th August. I have no doubt that this is in the best interests of States, and every wise Ruler and wise Government would desire to link up with the great Dominion of India on a basis which leaves you great internal autonomy and which at the same time gets rid of your worries and cares over External Affairs, Defence and Communications.

The whole country is passing through a critical period. I am not asking any State to make any intolerable sacrifice of either its internal autonomy or independence. My scheme leaves you with all the practical independence that you can possibly use and makes you free of all those subjects which you cannot possibly manage on your own. You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible. Whatever may be your decision, I hope you feel that I have at least done my duty by the States.

STANDSTILL AND ACCESSION

(i)

*Form of Standstill Agreement entered into by the Dominion of India and the Indian States<sup>1</sup>*

Whereas it is to the benefit and advantage of the Dominion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being, between the Dominion of India or any part thereof and the Indian States:

Now therefore it is agreed between the.....State and the Dominion of India that:

1. (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof, and the State.

(2) In particular, and without derogation from the generality of sub-clause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this Agreement.

2. Any dispute arising out of this Agreement, or out of the agreements or arrangements hereby continued, shall, unless any provision is made therein for arbitration by an authority other than the Governor-General or Governor, be settled by arbitration according, as far as may be, to the procedure of the Indian Arbitration Act, 1899.

3. Nothing in this Agreement includes the exercise of any paramountcy functions.

.....State

.....  
Secretary to the Government  
of India.

SCHEDULE

1. Air Communications.
2. Arms and equipment.
3. Control of commodities.

1. *White Paper on Indian States* (Government of India Press, New Delhi, July 1948), pp. 52-3.

## STANDSTILL AND ACCESSION

4. Currency and coinage.
5. Customs.
6. Indian States Forces.
7. External Affairs.
8. Extradition.
9. Import and Export Control.
10. Irrigation and Electric Power.
11. Motor Vehicles.
12. National Highways.
13. Opium.
14. Posts, Telegraphs and Telephones.
15. Railways (including police and other arrangements in Railway lands).
16. Salt.
17. Central Excises, relief from double income-tax and other arrangements relating to taxation.
18. Wireless.

(ii)

### *Form of Instrument of Accession executed by the Indian States*

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

Now therefore, I .....

.Ruler of .....  
in the exercise of my sovereignty in and over my said State

Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of.....(hereinafter referred to as "this State") such functions as may be vested in them by or under

the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act");

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

## STANDSTILL AND ACCESSION

Given under by hand this.....day of August,  
Nineteen hundred and forty-seven.

I do hereby accept this Instrument of Accession.

Dated this.....day of August, nineteen hundred  
and forty-seven.

.....  
(Governor-General of India)

### SCHEDULE

The matters with respect to which the Dominion Legislature  
may make Laws for this State—

#### A. Defence

1. The naval, military and air forces of the Dominion and any  
other armed force raised or maintained by the Dominion; any arm-  
ed forces, including forces raised or maintained by an Acceding  
State, which are attached to, or operating with, any of the armed  
forces of the Dominion.

2. Naval, military and air force works, administration of can-  
tonment areas.

3. Arms, firearms, ammunition.

4. Explosives.

#### B. External Affairs

1. External Affairs; the implementing of treaties and agree-  
ments with other countries; extradition, including the surrender of  
criminals and accused persons to parts of His Majesty's Dominions  
outside India.

2. Admission into, and emigration and expulsion from, India,  
including in relation thereto the regulation of the movements in  
India of persons who are not British subjects domiciled in India or  
subjects of any acceding State; pilgrimages to places beyond India.

3. Naturalisation.

#### C. Communications

1. Posts and telegraphs, including telephones, wireless, broad-  
casting, and other like forms of communication.

2. Federal railway; the regulation of all railways other than  
minor railways in respect of safety, maximum and minimum rates  
and fares, station and service terminal charges, interchange of traf-  
fic and the responsibility of railway administrations as carriers of

goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation including shipping and navigation on tidal waters; Admiralty jurisdiction.

4. Port quarantine.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

6. Aircraft and air navigation; the provision of aerodromes, regulation and organization of air traffic and of aerodromes.

7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

8. Carriage of passengers and goods by sea or by air.

9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area.

#### **D. Ancillary**

1. Elections to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.

2. Offences against laws with respect to any of the aforesaid matters.

3. Inquiries and statistics for the purposes of any of the aforesaid matters.

4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the Acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

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#### **SPEECH BY HIS HIGHNESS THE MAHARAJA OF BIKANER ON THE OCCASION OF THE FLAG HOISTING CEREMONY ON AUGUST 15, 1947<sup>1</sup>**

My Beloved People,

We are all gathered here today on a truly momentous occasion. Indeed it can well be said that this is one of the greatest moments in the history, not only of India but of the world, when 330 million

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1. Munshi Papers.

people—in fact more than a sixth of the entire population of the world—take their place among the free peoples as an independent nation. Peacefully the great Dominion of India has come into existence and the Flag which we have assembled here to honour is the visible and sacred emblem of the Dominion of India.

The Indian National Flag represents no political party, no section of the people, no community, no special interests; nor can it be appropriated by any section. It is the symbol of Indian unity and Indian nationhood. It is our duty as Indians to see that it is not dragged into the mire of political controversy or party factions or dishonoured by being associated with movements and programmes which do not receive universal assent.

We in our Bikaner, this sacred land of our birth, have had our own traditional and ancient Flag for the last 500 years which is separate and distinct. This Flag has been universally venerated and held sacred by all classes and communities of my people throughout the State. It has been the sacred symbol under which everyone has mustered irrespective of religion, caste or creed and even shed their blood to preserve its sanctity and our existence as a State. From the day of the foundation of the State up till now during these five centuries the Bikaner Flag has been directly instrumental in knitting together the diverse elements and the different faiths under the aegis of the Ruler and has preserved communal harmony in the State. To the Bikaner Flag the loyalty and allegiance of all patriotic citizens of the State are legitimately due. There is no question of the Indian National Flag superseding the Flag of Bikaner any more than the new Dominion of India superseding the sovereignty of this State. Bikaner continues to be a sovereign State even though it has acceded to the Dominion of India and as such our Flag not only maintains its separate character but shall fly proudly and reign supreme in Bikaner, rousing as before during the five centuries of its existence, the loyalty and veneration and the undying hopes and aspirations of the people of Bikaner and ever stirring up in their blood feelings of patriotism to the State and love and devotion to their Ruler.

Not only for my beloved people but for all those gallant officers and men who form the Bikaner Army their loyalty and allegiance are directly to their Flag, their Ruler and their State.

In the circumstances let there be no doubt to the contrary in the mind of any one, for the Bikaner Flag will continue to fly as ever as a symbol of the sovereignty, autonomy and separate entity of our State which we are naturally ever zealous to safeguard and maintain. Therefore even today you see it proudly flying alone and supreme on all state buildings. There need be no conflict bet-

ween the Indian National Flag and the Flag of the State, both continuing to fly with perfect understanding within their legitimate spheres.

Today however we have assembled here as true and patriotic Indians to do honour to the great Indian National Flag which takes its rightful and proud place amongst the Flags of the free nations of the world. I claim that no greater compliment and honour could be paid by me and my people to the Indian National Flag than that this important ceremony is being performed by the hand of your Ruler, and I am happy to feel that I am supported in this by such a large congregation of my own beloved people of all classes and creeds. To the people all over India today the Indian National Flag has a significance which we in Bikaner, proud of our ancient and traditional Flag of Bikaner and all that it has stood for, for hundreds of years in the chequered and glorious history of our State and what it stands for today, can well understand and appreciate.

India as a country had no Flag of its own at any time in its history. There was no visible symbol which stood for the hopes and aspirations of all sections of its people. Today the Indian National Flag flies on the high seas on India's ships, on the Indian Embassies in distant capitals in London, Moscow, Nanking and Washington. Who is there in this vast land who is not thrilled by the thought that today comes into existence a venerated and sacred outward sign of India's freedom and independence?

My beloved people, I will now ask you all to rise and join me in all solemnity in doing honour to the venerated National Flag of India by saluting it and let us also with equal solemnity salute the Bikaner Flag which, although it is India's day of independence that we are celebrating today, you see flying side by side, symbolising our own sovereignty, autonomy and separate entity, and denoting at the same time the State's honoured position in association with the Dominion of India.

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SPEECH BY HIS HIGHNESS THE MAHARAJA OF BIKANER  
AT THE BANQUET HELD AT LALGARH ON AUGUST 15, 1947<sup>1</sup>

Ladies and Gentlemen,

I thank you, Mr. Prime Minister, for the loyal toast that you have proposed and for the many kind sentiments that you have

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1. Ibid.



given expression to in regard to the part which it fell to my lot to play recently in the political arena of India. It is all the more a great pleasure to me to feel that these sentiments come on behalf of my beloved people as well as from my government and all my officers, and I find it difficult to give expression in adequate words to my gratitude for all that you have said. I can only say that I have done my duty to India, to the States as a whole and to my State and my beloved people.

Today's celebrations are in honour of a great and historic event. Last night at the stroke of twelve British authority in India ceased by its own volition and power was transferred to Indian hands: surely an act of true greatness and statesmanship for which there is no parallel in the history of the world. Other countries have become independent after long and fierce wars, rebellions and prolonged troubles, but the termination of a hundred and fifty years of authority, by a voluntary act of renunciation, with complete goodwill on both sides, is an event for which you may search recorded history in vain to find a precedent. By this single act the British Nation has shown to the people of the world what political wisdom is, and today India enters on her inheritance and a new era in a spirit not only of rejoicing and happiness, but of goodwill and cordiality towards the British with whom she has been associated for so long. As a free nation India is still associated with Britain. The House of Windsor unites the great Dominions and is the external symbol of the Commonwealth of which India, of her own will, is a member. Emperor no longer by his own choice, His Majesty is today the King of the Dominion of India, and I feel confident that this association will be a happy one.

As for the Indian States, their long connection with the British Crown as allies and friends has ceased. We will indeed be ungrateful if we do not at the termination of that unique and happy relationship, brought about by changed circumstances, wholeheartedly acknowledge the keen solicitude and interest evinced by His Majesty King George VI and his illustrious predecessors in the well-being of the Ruling Princes and States of India and the many kindnesses and favours which we have received at their hands and to whom it has been our proud privilege to have given at all times our loyalty and unstinted support and co-operation, whether in peace or in war.

With the lapse of paramountcy it was open to the States of India to stand aside and refuse to associate with the new Dominion. Legally we could all have been independent today, for the suzerainty which we had surrendered to the British Crown had reverted to

us under the Indian Independence Act and we could have stood aside and not acceded to the Indian Dominion. A moment's consideration would show how disastrous the consequences would have been. It would have meant India breaking up into small fragments, comprising of Indian States and Provinces, without being integrated at the Centre and with its defence and communications interfered with at every stage by foreign territory. Nor can the fact be ignored that the States which number several hundreds were not in a position to stand by themselves. It was therefore clear to us who had carefully studied the problem that if the matter was approached in petty-minded selfishness chaos and anarchy would have been the inevitable result and in the unsettled conditions that were sure to follow, the States themselves stood in serious danger of being submerged.

From the beginning my mind was made up. With full knowledge of its implications, I decided without hesitation to co-operate with those elements in India which were working for the establishment of a stable Central Government and to oppose with determination any forces that might come in the way of such a consummation. It was only by giving our wholehearted support towards that end that we could hope to prevent chaos and internal strife in India and I was convinced that the interests of the Bikaner State and my beloved people lay in that direction.

As you are aware, on the auspicious day of the 7th August I put my signature to the Instrument acceding to the Dominion of India. I would however like to state that the present accession is limited only in regard to the three categories of Defence, External Affairs and Communications. On that day a Standstill Agreement was also signed on behalf of the Bikaner State which preserves the *status quo* and provides for the maintenance of the existing rights of the State in all matters of common concern of an administrative, economic and fiscal nature. In this Standstill agreement the present position of my Army and its relationship with the Ruler have been fully safeguarded.

I will not repeat all that I said at this morning's Flag Ceremony about the autonomous and sovereign position of the Bikaner State on its accession to the Dominion, and the sanctity, reverence and profound veneration in which the ancient and traditional Flag of Bikaner is held by us. If I may use a familiar expression, the saying—

“Daughter am I in my father's house, but mistress in my own”

aptly describes the position today in India of our ancient State and our Flag.

Those of us who have had the good fortune and privilege of serving India's cause and that of our States and who were in the vanguard amongst the important States to enter the Constituent Assembly are indeed proud and happy to see the consummation of our efforts. Had India not been thus united in a constitutional relationship with the States, what would have been the position today? It would indeed have been gloomy and dark. The British Parliament would have withdrawn its authority on the 15th August irrespective of whether or not the States acceded to the Dominion, and the new Dominion would have come into a heritage which I might describe as a structure the roofs of which had disappeared over wide areas, the wings of which were connected by long and dark corridors, and the whole leaking and in an unsafe condition—a structure which could have been held together, if at all, only with the greatest difficulty. By the accession of the States all this danger has been overcome and a stable and well integrated Dominion celebrates today the independence which it is in a position to enjoy.

The transition from dependence to freedom would have been neither so peaceful nor so effective but for the exceptional qualities which Lord Mountbatten brought to bear on this question. The last of our Viceroys, he has also undeniably been the greatest. There are few achievements to compare with his in modern history. Within the short period of four months, he has made the independence that has been promised a reality even before the leading actors on the stage of Indian politics were able to realise its full significance. A great leader in war, the Earl Mountbatten of Burma has shown himself even greater in the arts of peace, and it is indeed a striking tribute that not only the Indian leaders who knew and held him in high esteem, but the Constituent Assembly itself should have requested him to continue as the first Constitutional Governor-General of a free India. As one of his oldest friends, indeed the oldest in India having played together as children—I feel a natural pride in his unique achievement, Napoleonic in its massiveness, but far exceeding that of Napoleon in its quality.

The Princes and States have particular reason to be deeply grateful for the genuine sympathy and understanding which Lord Mountbatten has throughout brought to play in the delicate political negotiations of the last few months to help them as far as it lay in his power in safeguarding their legitimate interests and rights and taking their honoured place in the new structure.

Under the inspiring guidance of that great soul Mahatma Gandhi who is undoubtedly the greatest of India's leaders and

truly the father of the nation, Pandit Jawaharlal Nehru, the Prime Minister of the new Dominion, and Sardar Vallabhbhai Patel have been the architects of the new State of India. To them as the great leaders of the nation I offer my heartfelt congratulations and my earnest good wishes go out to them in full measure in the great task that lies ahead. I am happy to be able to express publicly today to these leaders in particular as well as to the other Indian leaders our sense of gratitude for their sympathetic attitude and desire to understand and meet the point of view of the States. The spirit of goodwill and co-operation displayed by them has in a large measure been responsible for facilitating the accession of the States to the Indian Dominion.

Freedom has come and that undoubtedly is a matter of heart-felt and sincere rejoicing. On this day let us therefore dedicate ourselves to work for the glory and greatness of our motherland—India—which can only be successfully achieved through the exercise of tolerance, discipline and respect for the rights of all.

Ladies and Gentlemen, I now ask you to join with me in drinking to a free India and to free Bikaner within a free India.

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PROPOSALS OF SIR V. T. KRISHNAMACHARI FOR GROUPING  
OF THE REMAINING STATES

*Para 2-B of the Minutes of the Meeting of the Union Constitution Committee held on August 24, 1947 to allocate 35 residuary seats in the House of the People*

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
1.	KHASI HILL STATES = 15 (Nos. 2 to 16 of Part III of Statistical Hand Book No. 1)	213,586	1	All non-salute States.
2.	BALUCHISTAN STATES = 3	..	..	Included in the Dominion of Pakistan.
3.	GUJARAT STATES (minus Baroda) = 12 (a) Bansda Dharampur Jawhar Rajpipla Sachin Sant	747,034	1	All salute States; Baroda given individual representation.

PROPOSALS OF V. T. KRISHNAMACHARI

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
	(b) Balasinor Baria Cambay Chhota Udaipur Lunawada Surgana	632,592	1	All salute States except Surgana.
4.	DANGS=14 (Serials 33 to 46) SANKHEDA MEWAS = 18 (serials 47 to 64) Rest of the Agency = 38 (65 to 102) TOTAL No. = 70 States	213,403	1	All non-salute States: one seat in view of the large number of units comprising the Group.
5.	BHUTAN = 1 (It does not seem to be possible to group it with any other contiguous State)	300,000	1	Salute State. (If it has decided to join the Dominion of India).
6.	CENTRAL INDIA STATES BHOPAL BUNDELKHAND MALWA AGENCIES = 55 (a) Panna and 21 non-salute States of Bundelkhand	417,199	1 1	26 salute and 29 non-salute States.
	Alipura; Bankpahari; Beri; Dharsunda; Bihat; Bijna; Dhurwai; Garrauli; Gaurihar Jaso; Jisni; Jamtarajanja; Kothi; Lugasi; Nogawan Rahi; Pahara; Palde; Sohawal; Taraon; Tari Fatehpur.			One salute and 21 non-salute States.
	(b) Ajaigarh Charkhari Bijawar Nagod	525,955	1	
				Mailhar Baraundha
	(c) Datia Orcha Samthar Chhatarpur Bacni Khaniadhana (Non-salute under Gwalior Residency)	805,856	1	
	(d) Ratlam Jaora Sitamau Sailana Jhabua Rajgarh Narsinghgarh Khilchipur Mohammadgarh Piploda Makrai	846,387	1	

# INDIAN CONSTITUTIONAL DOCUMENTS

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
	(e) Dhar Dewas Senior Dewas Junior Barwani Alirajpura Jobat Kathiawar Mathwar } Non-salute	747,174	1	
7.	CHHATISGARH STATES = 12 (minus Bastar, Kalahandi, Patna and Surguja):			Bastar, Kalahandi, Patna and Surguja allowed individual representation.
	(a) Kanker Nandgaon Raigarh Sakti Udaipur }	837,935	1	
	(b) Chhangbhakar Chhuikhadan Jashpur Kanwardha Korea Sarangarh Khaigarh }	796,265	1	
8.	ORISSA STATES AGENCY = 22			All non-salute States; Kconjhar given indi- vidual representation.
	(a) Athmalik Baramba Baudh Bonai Dhenkanal Nayagarh Ranpur Tigaria }	926,613	2	
	(b) Gangpur Khandpara Narsinghpur Sonipur Harsawan }	833,440	1	
	(c) Athgarh Bangra Hindol Nilgiri Pal-lahara Rerakhol Sraikela Talchar }	730,213	1	
9.	KASHMIR RESIDENCY (minus Kashmir) = 2	Not available	..	Kashmir given indivi- dual representation. The other two States are Hunza and Nagir. These have not acce- ded to the Dominion of India.

# PROPOSALS OF V. T. KRISHNAMACHARI

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
10.	KOLHAPUR RESIDENCY & DECCAN STATES AGENCY = 17 (minus Kolhapur)			Kolhapur given individual representation. All non-salute States.
	(a) Bhor Jamkhandi Janjira Jath Miraj Senior Miraj Junior Sangli	878,794	1	
	(b) Akalkot Andil Kurandwad Senior Kurandwad Junior Mudhol Phaltan Ramdurg Savanur Sawampwadi Wadi	814,086	1	
11.	MYSORE AGENCY = 2 (minus Mysore)	60,406	(See S. No. 24 below)	Mysore given individual representation. The other two States are Banganapalli and Sandur.
12.	NORTH-WEST FRONTIER = 5			Included in Pakistan Dominion.
13.	PUNJAB STATES = 12 (minus Bahawalpur and Patiala)			Two non-salute and rest salute States. Bahawalpur and Patiala given individual representation. Khairpur included in Pakistan Dominion.
	(a) Jind Nabha	701,856	1	
	(b) Chamba Kapurthala Mandi	779,881	1	
	(c) Dujana Faridkot Loharu Malerkotla Pataudi Suket	484,562	1	
14.	PUNJAB HILL STATES = 21 (minus Bilaspur and Tehri-Garhwal) (Nos. 225 to 276)	531,294	1	Tehri-Garhwal and Bilaspur given individual representation. 8 salute and rest non-salute States.

# INDIAN CONSTITUTIONAL DOCUMENTS

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
15.	Rajputana Agency=1			Bikaner given individual representation.
16.	EASTERN RAJPUTANA AGENCY=4 (minus Kotah and Bharatpur)			Kotah and Bharatpur given individual representation. All the four salute States.
	(a) Dholpur Karauli	439,314	1	
	(b) Bundi Jhalawar	371,666	1	
17.	JAIPUR AGENCY = 4 (minus Jaipur and Alwar)			Jaipur and Alwar given individual representation. 3 salute States and one non-salute Chiefship.
	Kishangarh Lawa Sahpura Tonk	521,795	1	
18.	MEWAR AND SOUTHERN RAJPUTANA STATES AGENCY = 4 (minus Udaipur)			Udaipur given individual representation. 3 salute States and 1 non-salute Chiefship.
	Dungarpur Banswara Kushalgarh Partabgarh	666,152	1	
19.	WESTERN RAJPUTANA STATES=4 (minus Jodhpur)			Jodhpur given individual representation. All the four (including Sirohi) salute States.
	Danta Jaisalmer Palanpur Sirohi	674,090		
20.	Sikkim	121,520	1	Salute State.
21.	WESTERN INDIA STATES = 14 (minus Bhavnagar, Cutch, Junagarh and Nawanagar)			Bhavnagar, Cutch and Nawanagar given individual representation; 12 salute and 2 non-salute States.
	(a) Gondal Idar Morvi	694,173		
	(b) Dhrangadhra Dhrol Jafrabad (Janjira) Limbdia Palitana Porbandar Radhanpur Rajkot Vijayanagar Wankaner Wadhwan	698,339		



# MINISTRY OF STATES NOTE ON DRAFT CONSTITUTION

Sr. No.	Name of Agency and Names of States	Aggregate Population of proposed Groups	No. of Seats to be allotted	Remarks
1	2	3	4	5
22.	WESTERN KATHIAWAR AGENCY = 10 (Nos. 319 to 328 of Part III of Statistical Handbook No. 1) Rest of the Agency (Nos. 329 to 365)	421,683	1	All non-salute States.
23.	NON-JURISDICTIONAL TALUKAS AND ESTATES OF WESTERN KATHIAWAR AGENCY = 50  Nos. 366 to 415 <i>ibid.</i> (figures of population not available)  EASTERN KATHIAWAR AGENCY = 8 Nos. 416 to 423 (119, 079)  REST OF AGENCY = 103 Nos. 424 to 526 (124, 973)  SABARKANTHA AGENCY = 8 Nos. 527 to 534 (162, 491) REST OF AGENCY = 37 Nos. 535 to 571 (296, 322)	761,865	2	All non-salute States.        Two seats in view of large number of States comprised in the Group.
24.	NON-JURISDICTIONAL TALUKAS AND ESTATES IN THE SABARKANTHA AGENCY = 13  No. 572 to 584 (population figures not available) States not included in any of the above groups.	Not available		Two seats in view of large number of States involved. All non-salute States.

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## NOTE ON THE DRAFT CONSTITUTION BY THE MINISTRY OF STATES<sup>1</sup>

### 1. States in Part II of First Schedule :

- (a) There should be provision for one Lieut. Governor or Chief Commissioner to hold charge of two such States:
- (b) If it is intended to integrate such a State in a Province or merge two such States, a simple procedure for an order being made for this purpose should be available: and it should not be necessary to follow any el-

1. By Sir B.N. Rau.

borate procedure, such as consulting Legislatures and Governments. I have the case of a State like Rampur in mind.

2. There may still be certain small States which are not integrated by the time the Constitution is passed. (Manipur may be one of them). Provision should be made for them. They cannot obviously have a regular democratic set-up.

3. The treatment of Hyderabad with reference to our commitments will require further consideration.

4. The special position of Jammu and Kashmir will have to be provided for. Would it be possible to have a transitional provision keeping alive the present Instrument of Accession of the State even under the new Constitution until we know what the ultimate position of that State will be? Section 225 as now redrafted does not seem to be enough.

5. What will be the position :

- (a) of the rights and obligations of the Government of India arising from the various Covenants;
- (b) the powers conferred on the Rajpramukhs in regard, for instance, to the administration of the State forces and scheduled areas and other matters where he is not required to consult his Council of Ministers;
- (c) the rights and privileges assured to the Rulers of the Covenanting States under the various Covenants?

We should like, if possible, to insert a clause in the Draft Constitution recognising the Covenants and the rights and obligations arising therefrom; at the same time I am not in favour of drafting it in the form of a formal guarantee which will enable minor matters being taken to the Courts.

6. The Indian States Finances Enquiry Committee will probably make their proposals on the basis that the privy purses assured in the various Covenanting and Merger Agreements to the Rulers will be paid out of the amounts charged on the revenues of the Centre. We would not therefore like that a contribution should be paid from the Unions to the Central Government to cover the payments of these amounts. At the same time, we attach much importance to the payment of these amounts being charged on the revenues of the Indian Union.

7. I think we must have an Article on the lines of Section 93 of the Act of 1935. Article 188 is not, I think, wide enough to cover this; for one thing that Article requires that the emergency should be one in which the position and tranquillity of the State is threatened.

LETTER FROM V T. KRISHNAMACHARI

8. In our Covenants we have a provision which will enable the Government of India to exercise powers of direction and control over the Governments of Unions of States until the new Legislatures under the new Constitution for these Unions are elected and start functioning. These, we expect, will take place some time in 1952 or so. It is very important that these powers of control assumed by the Government of India should not be diminished in any way during this period. The answer to this probably lies in having a transitional provision which will enable the set-up in these Unions on the date of the passing of the Act, continuing to function with the same powers and under the same limitations to which they are subject at the time until the new Legislatures under the new Constitution are elected and start functioning.

9. Procedure for the acceptance of the new Constitution by States.

10. In the draft amendments, the heads of the States specified in Part II of the Constitution are designated 'Rulers'. We would prefer to designate them as 'Rajpramukhs' and if necessary, include in the definition of Rajpramukh, a clause enabling that definition to cover rulers of States which are not affected by the integration policy.

11. Should the State Legislatures be unicameral or bicameral?

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LETTER FROM SIR V. T. KRISHNAMACHARI, PRIME MINISTER,  
JAIPUR, TO THE JOINT SECRETARY, CONSTITUENT  
ASSEMBLY OF INDIA, NOVEMBER 19, 1947

I enclose herewith a revised statement showing the distribution of seats among States in (i) the House of the People and (ii) the Council of the States.

A revised distribution has become necessary because through oversight there are a few mistakes in the distribution as recorded in the minutes of the last meeting. These mistakes have now been corrected. Further, an attempt has been made in the statement that I now enclose to have as far as possible the same constituencies for both the Houses.

I shall be glad if you will distribute these revised proposals among the members of the Union Constitution Committee. These proposals supersede all previous lists submitted by me.

# INDIAN CONSTITUTIONAL DOCUMENTS

## *Representation of Indian States in the Council of States and the House of the People*

1. (a) In the Council of States all States having individually a population of one million or over will be represented on the scale of one representative for every whole million of the population up to 5 millions plus one representative for every additional 2 millions of the population provided that individual States with a population of three-fourth of a million will be allotted **one seat** as detailed in Table I.

(b) The remaining States will be represented by groups as detailed in Table II.

2. In the House of the People, States or groups of States will be represented on the scale of one representative for every 6.25 lacs of the population of the State or groups of States provided that individual States with a population of 5 lacs and above will be allotted one seat. (See Tables I & II).

TABLE I

No.	Name of State	POPULATION in millions	No. of seats in the COUNCIL OF STATES	No. of seats in the HOUSE OF THE PEOPLE	REMARKS
			(including all fractions of populations.)	(granting one seat to fractions of 50% of the quota and above.)	
1.	Hyderabad ..	16.33	10	26	For Council of States, the allocation of seats is made omitting all fractions of population.
2.	Mysore ..	7.32	6	12	
3.	Travancore ..	6.07	5	10	
4.	Kashmir ..	4.02	4	6	
5.	Gwalior ..	4.00	4	6	
6.	Jaipur ..	3.04	3	5	For the House of the People the allocation is made granting 1 seat to fractions of 50% of the quota and above.
7.	Baroda ..	2.85	3	5	
8.	Jodhpur ..	2.55	2	4	
9.	Patiala ..	1.93	2	3	
10.	Udaipur ..	1.92	2	3	
11.	Rewa ..	1.82	2	3	
12.	Indore ..	1.51	1	2	
13.	Cochin ..	1.42	1	2	
14.	Bikaner ..	1.29	1	2	
15.	Kolhapur ..	1.09	1	2	
16.	Mayurbhanj ..	.99	1	2	
17.	Alwar ..	.82	1	1	
18.	Bhopal ..	.78	1	1	
19.	Kotah ..	.77	1	1	
Total		60.52	51	96	

LETTER FROM V. T. KRISHNAMACHARI

TABLE II

THE COUNCIL OF STATES				THE HOUSE OF THE PEOPLE		
No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
I. PUNJAB STATES						
1.	Tehri-Garhwal	3.97	1	As in column 2 (same as for Council of States)	1	For the House of the People allocation is made granting 1 seat to fractions of 50% of the quota and above.
2.	Sirmur	1.56				
3.	Bashahr	1.16				
		6.69				
II. 4.	Mandi	2.32	1	,,	1	
5.	Chamba	1.68				
6.	Suket	.71				
7.	Bilaspur	1.10				
8.	All non-salute Punjab Hill States	3.11				
		8.92				
III. 9.	Nabha	3.40				
10.	Jind	3.61				
11.	Loharu*	.27	1	,,	1	*If Loharu has political arrangement with Bika- ner it will be shown as included in Bikaner and item 11 of group III will be deleted.
12.	Non-salute States of Dujana and Pataudi ..	.51				
		7.79				
IV. 13.	Kapurthala	3.78				
14.	Malerkotla	.88	1	,,	1	
15.	Faridkot	1.99				
		6.65				
TOTAL PUNJAB STATES		30.05	4		4	
V. RAJPUTANA STATES						
1.	Karauli	1.52				
2.	Bharatpur	5.75	1	As in column 2 (same as for Council of States)	2	In the House of the People Bharatpur is allotted one seat.
3.	Dholpur	2.86				
		10.13				
VI. 4.	Bundi	2.49				
5.	Kishengarh	1.04	1	,,	1	
6.	Tonk	3.53				
7.	Jhalawar	1.22				
8.	Shahpura	.61				
		8.89				

# INDIAN CONSTITUTIONAL DOCUMENTS

TABLE II—(contd.)

THE COUNCIL OF STATES			THE HOUSE OF THE PEOPLE			
No.	Name of State or Group of States	Population in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
VII.	9. Dungarpur 10. Partabgarh 11. Banswara *Kushalgarh	2.74 .91 2.99 <hr/> 6.64	1	As in column 2 (same as for Council of States)	1	*If allowed to accede to the Dominion of India separately. But if not so permitted Kushalgarh will be deleted from group VII as it will be included in Banswara.
VIII.	12. Sirohi 13. Idar 14. Danta 15. Non-salute States of Vijayangar and the following of Sabarkantha Agency, Mohanpur, Malpur, Magodi, Dadhalai Wadagam, Rupal, Likhi, Ranasan, Ambaliara and Nos. 535-537, 539, 542-43, 545-48, 551, 555, 557, 562-64, 556-67, 582-83 of Statistical Handbook, No. 1, p. 22	2.33 3.07 .31 .13  1.47  <hr/> 7.31	1	,,	1	
IX.	16. Jaisalmer 17. Palanpur 18. Radhanpur 19. Non-salute States of Tharad, Wao, Warahi-Kanji, Deodar, Deodar Thana, Santalpur Thana, Suigam Thana, Warahi Thana, Thara, Adesar & Terwada Taluka	.93 3.15 .67  1.86 <hr/> 6.61	1	,,	1	
<b>TOTAL FOR RAJPUTANA STATES</b>		<b>39.58</b>	<b>5</b>		<b>6</b>	

LETTER FROM V. T. KRISHNAMACHARI

TABLE II—(contd.)

THE COUNCIL OF STATES				THE HOUSE OF THE PEOPLE		
No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
X. CENTRAL INDIA STATES :						
	1. Panna	2.31				
	2. Ajaigarh	.96				
	3. Charkhari	1.23				
	4. Bijawar	1.20				
	5. Nagod	.87	1	As in column	1	
	6. Maihar	.79		2 (same as		
	7. Baraundha	.17		for Council		
	8. Adjoining Non- salute States of Bundelkhand Agency Nos.115, 120, 128 to 134, 137, 139, 140, 143, 144 and 145 of Statis- tical Handbook No. 1	1.65		of States)		
		9.18				
XI.	9. Datia	1.74				
	10. Orchha	3.63				
	11. Samthar	.38	1	,,	1	
	12. Chattarpur	1.84				
	13. Baoni	.25				
	14. Non-salute States of Khanaidhana and adjoining non-salute States of Bundelkhand Agency Nos. 116, 119, 121, 123, 127, 146 of Statistical Handbook No. 1	.25				
		8.39				
XII.	15. Ratlam	1.26				
	16. Jaora	1.16				
	17. Sitamau	.33				
	18. Sailana	.40	1	,,	1	
	19. Jhabua	1.78				
	20. Rajgarh	1.48				
	21. Narsingarh	1.25				
	22. Khilchipur	.48				
	23. Non-salute States of Pathari, Kur- wai, Muham- madgarh, Pip- loda and Makrai	.60				
		8.74				

# INDIAN CONSTITUTIONAL DOCUMENTS

TABLE II—(contd.)

THE COUNCIL OF STATES			THE HOUSE OF THE PEOPLE			REMARKS	
No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People		
1	2	3	4	5	6	7	
XIII.	24. Dhar	2.53					
	25. Dewas Sr.	.89					
	26. Dewas Jr.	.83					
	27. Barwani	1.76	1	As in column	1		
	28. Alirajpur	1.12		2 (some as			
	29. Non-salute States Jobat, Kathiwara and Mathwar	.29		for Council of State)			
		7.42					
TOTAL CENTRAL INDIA STATES		33.63	4		4		
XIV.	1. Rampur	4.77	1	„	2	Each of the States is allotted one seat in the House of the People.	
	2. Benares	4.51					
	TOTAL	9.28					
XV.	GUJARAT STATES :						
	1. Sant	.94					
	2. Baria	1.89					
	3. Lunawada	1.05	1	„	1		
	4. Chhota Udaipur	1.62					
	5. Balasinor	.61					
	6. Non-salute States of Sankheda Mewas, Pandu Mewas and the re- maining Gujarat States Agency and the following from Sabarkantha Agency Nos. 544, 550, 556 and 561 of Statistical Hand Book, No. 1 p. 22	1.92					
		8.03					
XVI.	7. Rajpipla	2.49					
	8. Janjira & Jafrabad	1.17					
	9. Bansda	.54					
	10. Dharampur	1.23	1	„	1		
	11. Jawhar	.65					
	12. Camba	.96					
	13. Sachin	.26					
		7.30					
TOTAL GUJARAT STATES		15.33	2		2		



LETTER FROM V. T. KRISHNAMACHARI

TABLE II—(contd.)

THE COUNCIL OF STATES			THE HOUSE OF THE PEOPLE			
No.	Name of State or Group of States	Population in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
XVII. KATHIAWAR STATES						
	1. Cutch	5.00				
	2. Morvi	1.41	1	Cutch	1	
		6.41				
XVIII. 3. Bhavnagar						
	4. Palitana	.76	1	Bhavnagar	1	
		6.94				
XIX. 5. Nawanagar						
	6. Porbandar	1.46	1	Nawanagar	1	
	7. Dhrol	.33				
		6.83				
XX. 8. Junagadh						
	9. Manavadar (Non-salute State)	.26	1	Junagadh	1	
		6.96				
XXI. 10. Dhrangadhra						
	11. Gondal	2.44		1. Morvi		
	12. Wankaner	.54		2. Palitana		
	13. Rajkot	1.02		3. Porbandar		
	14. Wadhwan	.50	1	4. Dhrol		
	15. Limbdi	.44		5. Dhrangadhra		
				6. Gondal		
				7. Wankaner	2	
				8. Rajkot		
				9. Wadhwan		
				10. Limbdi		
				11. Jasdan		
				Jetpur,		
				Manavadar	10.82	
	16. Non-salute States of Jasdan and Jetpur	.72				
		6.60				

# INDIAN CONSTITUTIONAL DOCUMENTS

TABLE II—(contd.)

THE COUNCIL OF STATES				THE HOUSE OF THE PEOPLE		
No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
XXII.	Non-salute States of Western Kathi- awar Agency. (States Nos. 319, 17. 322 to 324 and 326 to 415 on pages 18-20 of the Stat- istical Hand Book No. 1)	3.23	1	As in col. 2 (Same as for Council of States)	1	
	Non-salute States of Eastern Kathia- war Agency 18. (States Nos. 416 to 526 on pages 20-22 of the Sta- tistical Handbook No. 1)	3.04				
	Non-salute States of Sabarkantha Agency. States No. 529, 549, 554, 558, 1.04 19. 571, 572-579, 581 and 584, on page 22 of the Statis- tical Hand Book No. 1	7.31				
TOTAL FOR KATHIAWAR STATES		41.05	6		7	
XXIII.	BENGAL AND ASSAM STATES :					
	1. Tripura	5.12	1	As in col. 2 (same as for Council of States)	2	Each State is allotted one seat in the House of the People.
	2. Manipur	5.12				
		10.25				
XXIV.	3. Sikkim	1.21	1	,,	2	Cooch-Bihar is allotted one seat in the House of the People.
	4. Cooch-Bihar	6.40				
	5. Non-salute States of Khasi Hills	2.13				
TOTAL FOR BENGAL AND ASSAM STATES		19.99	2		4	

LETTER FROM V. T. KRISHNAMACHARI

TABLE II—(contd.)

THE COUNCIL OF STATES				THE HOUSE OF THE PEOPLE		
No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
<b>XXV. DECCAN STATES :</b>						
	1. Sangli	2.93				
	2. Aundh	.88				
	3. Bhore	1.55	1		1	
	4. Miraj Sr.	1.08				
	5. Miraj Jr.	.46				
	6. Phaltan	.71				
	7. Ramdurg	.40				
		8.01				
<b>XXVI. 8. Sawantwadi</b>						
	9. Akalkot	1.03				
	10. Jamkhandi	1.26	1		1	
	11. Jath	1.07				
	12. Kurunwad Sr.	.52				
	13. Kurunwad Jr.	.46				
	14. Mudhol	.72				
	15. Savanur	.22				
	16. Wadi	.02				
		7.82				
<b>TOTAL DECCAN STATES</b>		<b>15.83</b>	<b>2</b>		<b>2</b>	
<b>XXVII. MADRAS STATES :</b>						
	1. Pudukottai	4.88				
	2. Banganapalle	.44	1		1	
	3. Sandur	.15				
<b>TOTAL MADRAS STATES</b>		<b>4.97</b>				
<b>XXVIII. CHHATISGARH STATES :</b>						
	1. Bastar	6.83				
	2. Kanker	1.49	1	Bastar	1	
		7.82				
<b>XXIX. 3. Khairagarh</b>						
		1.73		1. Kanker		
				2. Khairagarh		
	4. Nandgaon	2.02		3. Nandgaon		
	5. Kawardha	.77		4. Kawardha		
				5. Chhui		
				Khadan		
	6. Chhui Khadan	.32	1	6. Sarangarh	2	
	7. Sarangarh	1.40		7. Sakti		
				8. Raigarh		
	8. Sakti	.54		Total		
	9. Paigarh	3.12		Population	11.39	
		9.90				

# INDIAN CONSTITUTIONAL DOCUMENTS

## TABLE II—(contd.)

THE COUNCIL OF STATES				THE HOUSE OF THE PEOPLE		
No.	Name of State or Group of States	Popula- tion in laes	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
XXX. 10.	Sarguja	5.51		As in col. 2		Sarguja is allotted one seat in the House of the People and the rest of the States another.
11.	Jashpur	2.23		(same as for		
12.	Korea	1.26		Council of		
13.	Udaipur	1.18	1	States)	2	
14.	Chhanghnakar	.21				
		10.39				
TOTAL CHHATISGARH STATES		28.11	3		5	
XXXI. ORRISSA STATES :						
1.	Panta	6.32				Each of the States is allotted one seat in the House of the People.
2.	Kalahandi	5.97	1	„	2	
		12.29				
XXXII.						
3.	Keonjhar	5.29				Keonjhar is allotted one seat in the House of the People and the rest of the States another.
4.	Dhenkanal	3.24				
5.	Nilgiri	.73	1	„	2	
6.	Talchar	.86				
		10.12				
XXXIII.						
7.	Gangpur	3.98				
8.	Bonai	.92				
9.	Seraikela	1.54	1	„	1	
10.	Kharsawan	.50				
		6.94				
XXXIV.						
11.	Bamra	1.78				
12.	Pal-Lahara	.34				
13.	Rairakhol	.38	1	„	1	
14.	Sonepur	2.48				
15.	Baudh	1.46				
		6.44				

LETTER FROM V. T. KRISHNAMACHARI

TABLE II—(contd.)

No.	Name of State or Group of States	Popula- tion in lacs	No. of seats in the Council of States	Name of State or Group of States	No. of seats in the House of the People	REMARKS
1	2	3	4	5	6	7
XXXV.						
16.	Athmallik	.72				
17.	Hindol	.58				
18.	Athgarh	.55				
19.	Tigiria	.26				
20.	Barmaba	.52	1	As in col. 2	1	
21.	Narsinghpur	.48		(same as for		
22.	Khandpara	.87		Council of		
23.	Ranpur	.51		States)		
24.	Nayagarh	1.61				
25.	Daspalla	.53				
		6.63				
TOTAL FOR ORISSA STATES		42.42	5		7	
TOTAL OF TABLE II						
		280.24 (lacs)	35		44	
GRAND TOTAL						
TOTAL OF TABLE I		60.52 (millions)	51		96	
TOTAL OF TABLE II		28.02 (milliou)	35		44	
TOTAL OF TABLES I & II						
		88.45 (million)	86		140	

CONVENTION OF THE REPRESENTATIVES OF INDIAN STATES  
IN THE CONSTITUENT ASSEMBLY OF INDIA<sup>1</sup>

11-A, Western Court,  
New Delhi, 8-12-1948.

Chairman : Shri Ram Sahai (Madhya Bharat).  
Secretary : Dr. Y. S. Parmar (Himachal).  
Treasurer : Shri Chimanlal Chakubhai Shah (Saurashtra).  
Members : Shri Gopi Krishnan Vijai Vargiya (Madhya  
Bharat).  
Shri Raj Bahadur (Matsya).  
Shri K. Hanumanthaiya (Mysore).  
Shri P.S. Nataraja Pillai (Travancore).  
Shri Jai Narain Vyas (Jodhpur).  
Shri Sarangdhar Dass (Orissa States).

The Secretary,  
Ministry of States,  
New Delhi.

Dear Sir,

The Executive Committee of the Convention has authorised me to convey to you the following decision of the Committee:—

‘It is reported that the States Ministry has appointed a Committee to draft a model constitution for the States and you have asked the States not to proceed with the framing of constitutions pending framing of the model constitution. The Committee regrets that such an important decision should have been taken without consulting the representatives of the States. The Committee, no doubt, welcomes the idea of framing a model constitution. The Committee, however, feels it to be absolutely necessary that representatives of the States should be on the Committee so that various points of view may be properly represented and the constitution to be drafted may be really useful. It will also save time and its acceptance will be facilitated if all points of view are represented from the beginning. We would therefore urge upon the States Ministry to appoint at least 3 representatives of the States on the Committee.’

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1. Munshi Papers.

## CONVENTION OF THE INDIAN STATES' REPRESENTATIVES

I may add that this Convention is a very representative body of the States' People consisting as it does of the members of the Constituent Assembly from all the States and I am to urge upon the States Ministry to utilise the services of the Convention in all States problems and to keep the Convention in touch with the policy and programme of the States Ministry.

Yours Faithfully,  
Y. S. Parmar  
*Secretary*

### Statement issued by the Convention

The Members from Indian States in the Constituent Assembly of India met in a Convention at the Constitution House, New Delhi on 18th, 20th, 22nd and 24th November 1948, under the Chairmanship of Shri Ram Sahai. The Convention received valuable help from Shri Govinda Menon in its early stages and from Shri S. Nijalingappa and Shri Chimanlal Chakubhai Shah at the later stages who contributed very greatly to the success of the Convention and coming to a unanimous decision. The Convention has authorised the Secretary to issue a statement incorporating its decision as under:—

The representatives of Indian States in the Constituent Assembly of India having met in a convention reviewed the position of the States people in the light of the events that have happened since 15th August 1947, and the policy of the States Ministry in relation to the States, their integration and democratisation, and the convention decided to issue the following statement:—

2. The Convention welcomes the policy of the States Ministry regarding the integration of the States and the progress made so far. The Convention feels that the logical conclusion of that policy is that the distinction between the States and the Provinces should be completely wiped out and the constitutional position and status of the States should be the same as that of the Provinces. The Convention urges upon the States Ministry to take all necessary steps without any delay to fulfil that policy and to put the States on the same footing as the Provinces so that there need be no Part III in the first schedule of the Draft Constitution. The Convention is aware that this will need re-arrangement of the existing Provinces by extending or altering the boundaries of some Provinces or by the creation of new Provinces.

3. The Convention expresses its deep regret and resentment that democratisation in some of the Unions and States like Vindhya, Himachal, East Punjab States and the State of Bilaspur has not

proceeded in terms of their respective covenants or other assurances with the result that there is great dissatisfaction among the people of those Unions and States.

4. The Convention expresses its grave concern regarding the administration of States that have ceded full authority, jurisdiction and power to the Government of India. They are administered in some cases as Centrally administered areas and in some cases by Provincial Governments on behalf of the Government of India under the Extra Provincial Jurisdiction Act. The representatives of these States are unanimous in their opinion that the administration of these States is far from being satisfactory. The Convention therefore demands that the people of these States should immediately be effectively associated with the administration of these States either by providing Legislatures and Popular Ministries where they are governed as Chief Commissioners' Provinces or by associating their representatives in the adjoining Provincial Legislatures respectively.

5. The Convention is of the opinion that in any adjustment of Provincial or State boundaries or in the creation of new Provinces in the light of the policy expressed in para 2 above the wishes of the people of the respective areas should be consulted and given effect to as far as possible.

6. The Convention is further of the opinion that in implementing the said policy it should be seen that the people of the respective states are not deprived of any of the amenities they at present enjoy.

7. The Convention further expresses the opinion that in the Draft Constitution at present under discussion by the Constituent Assembly sufficient autonomy should be left to the units to enable them to develop to the utmost advantage with adequate financial adjustment between the Union and the Units.

The Convention also appointed a Committee to give effect to the views above expressed consisting of the following persons:—

Chairman:	Shri Ram Sahai (Madhya Bharat).
Secretary:	Dr. Y.S. Parmar (Himachal).
Treasurer:	Shri Chimanlal Chakubhai Shah (Saurashtra).
Members:	Shri Gopi Krishan Vijai Vargiya (Madhya Bharat).
	Shri Raj Bahadur (Matsya).
	Shri K. Hanumanthaiya (Mysore).
	Shri P.S. Nataraja Pillai (Travancore).



MODEL CONSTITUTION FOR STATES

Shri Jai Narain Vyas (Jodhpur).

Shri Sarangdhar Dass (Orissa States).

(Sd/-) Y. S. Parmar

*Secretary*

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REPORT ON MODEL CONSTITUTION FOR STATES<sup>1</sup>

Council House,

New Delhi, the 21st March, 1949.

To

Shri K.M. Munshi,  
Birla House,  
New Delhi.

Dear Sir,

I am desired by Sir B.N. Rau to send you herewith a copy of the Draft Report of the Committee appointed to prepare a Model Constitution for Indian States and Unions. You will also find appended to the Report a copy of the Draft Constitution as approved by the Committee. The report will come up for final adoption before the meeting of the Committee to be held at 4 p.m. today afternoon in Room No. 30, Ground Floor, Council House, New Delhi, and Sir B.N. Rau hopes that it will be possible for you to attend the meeting.

Yours truly,

(Sd/-) P. S. Subramanian

Under Secretary.

REPORT OF THE COMMITTEE ON MODEL CONSTITUTION  
FOR INDIAN STATES AND UNIONS

To

The Secretary to the Government of India,  
Ministry of States.

Sir,

We have the honour to submit herewith the report of the Committee appointed to draft a Model Constitution for the States spe-

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1. Munshi Papers.

cified in Part III of the First Schedule to the Draft Constitution of India.

2. It was originally intended that the Committee should consist of the following four members:—

Messrs. B.N. Rau,  
K.M. Munshi,  
P. Govinda Menon, and  
Dr. R.U. Singh.

The following four representatives of the States in the Constituent Assembly of India were subsequently added to the number:—

Messrs. Ram Sahai,  
K. Hanumanthaiya,  
R. Shankar, and  
C.C. Shah.

3. We met on the 1st January, 16th February, 5th, 6th and 20th March, 1949, to settle the terms of the Draft (Appendix I). We hope that this Draft will serve as a guide to the Constituent Assemblies of the States in framing the Constitution for the respective States.

4. In preparing the Draft, we have for the most part followed the provisions in the Draft Constitution of India relating to the Provinces. There are, however, some matters in respect of which we have thought it necessary to suggest variations. The most important of these variations are dealt with in the paragraphs that follow.

5. **Article 1.** This corresponds to Article 129 of the Draft Constitution of India, and declares the Ruler to be the head of the State deriving his position from the will of the people. But, just as it is proposed that the Governor of each Province is to be appointed by the President, so too the Ruler has been defined to be the person for the time being recognized by the President as the Ruler of the State. Accordingly, no provision corresponding to Article 138 of the Constitution of India has been included in our Draft.

6. **Article 2.** We consider this to be a slight improvement on the corresponding provision in clause (1) of Article 130 of the Draft Constitution of India, since it provides explicitly that the ruler may exercise the executive power of the State either himself *or through officers subordinate to him*. Otherwise, it might be construed as requiring the exercise of the executive power of the State in every case by the Ruler himself, which would create practical difficulties in the administration of the State.

7. We doubt whether a provision for the impeachment of the Ruler by the Legislature for violation of the Constitution is necessary in view of the definition of the Ruler as the person who is for the time being recognized as such by the President. In the event of misbehaviour, the President may be trusted to withdraw his original recognition and to recognize a suitable successor.

8. **Article 9.** This article has been drafted in two alternative forms: the first alternative is for States which desire to have bicameral Legislatures and the second for those which desire to have unicameral. If the latter alternative is adopted, consequential modifications will be required in certain other articles; these are indicated in Appendix II of this Report.

9. **Article 11.** As we do not yet know the manner in which the Provincial Legislative Councils are going to be constituted, we have left the composition of the State Legislative Councils to be determined by Parliament, the object being to ensure uniformity in this regard throughout India.

As desired by some of the members of the Committee, the constitution and powers of the Second Chamber in Norway are given in Appendix III to this Report.

10. **Article 16.** As circumstances may arise in which a Ruler may not be able to address the Legislature in person, we have proposed that the address may either be by the Ruler himself or through his Chief Minister.

11. **Article 39.** In the Provinces, the salary and allowances of the Governor are charged on the revenues and do not require to be voted each year. Similarly, we have provided that the salary and allowances of the Ruler of an Indian State shall be charged on the State revenues. There is, however, a difference as to the authority for determining the amount to be charged in the two cases. In the case of Governors, the amount is to be determined by a law of the Provincial Legislature and, until so determined, is to be the figure prescribed in the Second Schedule to the Draft Constitution of India. We have not found it possible, for the following reasons, to recommend a similar provision in the case of Rulers: The salary and allowances of the Rajpramukh of a Union of States are prescribed in the Covenant creating the Union; and the Government of India have guaranteed the provisions of the Covenant. The Government of India being thus concerned in the matter, we could hardly lodge the power to fix salaries etc. in the Legislature of the State. We have therefore given this power to the President. In fixing the amount to be charged, the President will doubtless consider the terms of the Covenant in the case of Unions of States;

and in the case of single States, where there is no Covenant, he will doubtless be guided by the views of the Government and the Legislature of the State.

12. **Article 54.** In order to qualify for appointment as High Court judges, persons who have held judicial office in a State which has since become part of a Union of States we have worded sub-clause (a) of clause (2) as follows:—

“(a) has held for at least ten years judicial office *in India*.” Similar phraseology has been used in clause (b) also.

13. **Article 73.** It was brought to our notice by the Secretary of the Indian States Financial Enquiry Committee that in certain Unions it might become necessary to appoint Auditors-in-Chief immediately after the commencement of the new Constitution and that the restriction that no such appointment shall be made until the expiration of three years from the date of the Acts creating the appointments, though necessary in the case of Provinces, was unnecessary in the case of the Indian States. We have accordingly omitted the restriction.

14. **Article 95.** Departing from the provision in clause (2) of Article 289 of the Draft Constitution of India, we have proposed that the members of the Election Commission should be appointed by the President. This will avoid any local bias.

15. **Article 97-A.** We have included in the Draft a provision complementary to the provision recently introduced in the Government of India Act, 1935, as Section 290-B. We presume that a provision similar to the aforesaid Section 290-B will also be included in the Constitution of India.

16. **Article 99.** According to the Draft Constitution of India, a Bill for amendment of the Constitution can be initiated in a Provincial Legislature only in respect of two subjects, namely, (1) the method of choosing the Governor and (2) the number of Houses in the Legislature. As the Constitutions of the Indian States are ordinarily to be made by their own Constituent Assemblies, it has been proposed that the State Legislatures should have power to initiate any amendments to those Constitutions.

17. **Article 104.** In the article, we have provided for the contingency in which the work of Constitution-making is entrusted to the ordinary Legislature and not to a Constituent Assembly specially set up for the purpose.

18. **Third Schedule, paragraph 3.** As the Ruler's functions in the matter of assenting to Bills may be said to be *legislative* and as

the Ruler should act on advice in all matters whether executive or legislative, we have worded paragraph 3 as follows:—

“3. The Ruler shall in the exercise of the powers conferred upon him by this Constitution be guided by the advice of his Ministers.”

19. In accordance with Mr. Hanumanthaiya's wishes, we record here his views on certain paragraphs of this report:

**Paragraph 5**—Mr. Hanumanthaiya considers that the authority for recognizing the Ruler should be the Legislature of the State concerned and not the President.

**Paragraph 7**—Mr. Hanumanthaiya thinks that even if the recognizing authority is to be the President, there should be a provision in the Constitution for the impeachment of the Ruler by the State Legislature.

**Paragraph 9**—Mr. Hanumanthaiya suggests that if there is to be a Second Chamber in an Indian State, it should be based on indirect election: the primary voters should elect Village Panchayats, these should elect District Panchayats, these in their turn should elect the members of the Second Chamber.

**Paragraph 11**—Mr. Hanumanthaiya is of the view that the salary and allowances of the Ruler should be determined by a law of the State Legislature and not by the President.

**Paragraph 14**—Mr. Hanumanthaiya desires that the members of the State Election Commission should be appointed by the Ruler instead of by the President.

**Paragraph 18**—Mr. Hanumanthaiya holds that the powers of the State Legislature should be as full as those of the House of Commons except in so far as they have been surrendered or limited by the Instrument of Accession. He accordingly proposes that paragraph 4 of the Instrument of Instructions in the Third Schedule, which requires the Ruler to reserve certain Bills affecting the powers of the High Court for the consideration of the President, as in the case of Provinces, should be omitted. Similarly he suggests that in Article 3 of the Draft Constitution the words “Subject to the provisions of the Constitution of India” should be replaced by the words “Subject to the Instrument of Accession”.

20. We have already dealt with all these points sufficiently in our Report and would only add that in framing the Draft we have not thought it right to ignore commitments already entered into or decisions already arrived at. Thus, where a Union of States has

been brought into being by a Covenant, we have necessarily had to bear in mind the provisions of the Covenant. Again, Article 3 of the present Draft follows a similar provision for the Provinces contained in Article 142 of the Draft Constitution of India; if, therefore, the Constitution of the Indian States is to follow the provincial pattern, it would hardly be appropriate to refer to the Instrument of Accession instead of to the Constitution of India in this article. Mr. Hanumanthaiya evidently contemplates an Instrument of Accession which bars the operation of whole articles or whole groups of articles of the Constitution of India in the Indian States. This is a position which we have been unable to accept.

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NOTE BY SHRI K. V. K. SUNDARAM ON ACCEDING STATES

No. CA/19/Cons/49.

CONSTITUENT ASSEMBLY OF INDIA

Council House,  
New Delhi, the 8th June, 1949.

*Drafting Committee*

A meeting of the Committee will be held at 9 a.m. on Saturday, the 11th June, 1949, to consider the position of the Indian States vis-a-vis the new Constitution. In this connection, a copy of a note on the subject prepared by Mr. K.V.K. Sundaram, Secretary, Ministry of Law, is enclosed.

(Sd/-) S. N. Mukherjee  
Joint Secretary.

To

All members of the Drafting Committee.

**Note by Mr. K.V.K. Sundaram, Secretary,  
Ministry of Law**

The Acceding States may, from the constitutional point of view, be grouped as follows:—

A. Integral States, i.e., States which, having acceded in regard to the three main subjects of defence, external affairs and communications, have neither ceded jurisdiction nor combined

with other States to form Unions. These are (1) Mysore, (2) Kashmir, (3) Cooch-Bihar, (4) Manipur, (5) Tripura, (6) Benares, (7) Rampur, (8) Tehri Garhwal.

B. Unions of States, i.e., Unions established by Covenants entered by the Rulers of certain States which originally had acceded only in regard to the three subjects. The Unions themselves have subsequently acceded in regard to all List I and List III subjects, barring taxation entries. These are (1) Rajasthan, (2) Madhya Bharat, (3) Vindhya Pradesh, (4) Patiala and East Punjab States Union, and (5) Saurashtra. Very shortly there will be (6) Kerala (Union of Travancore and Cochin). Matsya has been integrated with Rajasthan.

C. Provincially Merged States, i.e., States which, after acceding in regard to the three subjects, surrendered full jurisdiction to the Dominion Government, and are now being administered practically as part of a Governor's Province under the provisions of the Extra-Provincial Jurisdiction Act. Within the next two or three months the process of integration with the Governors' Provinces will be carried a step further by the making of appropriate statutory orders under Section 290-A. Six Provinces have such accretions to their territories, Bombay, the C.P. and Berar, and Orissa having gained much more than Madras, Bihar and East Punjab. It is likely that Rampur, Benares and Tehri Garhwal [Nos. (6), (7) and (8) of Group A above] will be integrated with the U.P., but the future of Cooch-Bihar, Manipur and Tripura [Nos. (3), (4) and (5) of Group A] which adjoin Assam is not yet settled.

D. Centrally Merged States, i.e., States which, after acceding in regard to the three subjects, surrendered full jurisdiction to the Dominion Government and are now being administered centrally through a Chief Commissioner. Here again the process of merger will shortly be carried a step further by the issue of orders under Section 290-A, when there will be 4 new Chief Commissioners' Provinces, viz., (1) Himachal Pradesh, (2) Bilaspur, (3) Kutch, and (4) Bhopal.

E. The Khasi Hill States Federation.

2. In addition to the above, there are (1) Hyderabad, and (2) Junagadh, Mangrol, Manavadar, Babriawad, and one other small unit. The accession of Hyderabad to the Dominion or Union of India may possibly be effected before, or simultaneously with, the commencement of the new Constitution. If so, it will come under Group A. Junagadh and the other small territories adjoining it are

now being administered by the Saurashtra Government on behalf of the Government of India and will eventually become part of Saurashtra.

3. Now, Article 1 of, and the First Schedule to, the Draft Constitution read as follows:—

“Name and territory  
of the Union.

- (1) India shall be a Union of States.
- (2) The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule.
- (3) The territory of India shall comprise—
  - (a) the territories of the States;
  - (b) the territories for the time being specified in Part IV of the First Schedule; and
  - (c) such other territories as may be acquired.”

FIRST SCHEDULE

(Articles 1 and 4)

*The States and the Territories of India*

Part I

The territories known immediately before the commencement of this Constitution as the Governors' Provinces of—

- (1) Madras, (2) Bombay, (3) West Bengal, etc.

Part II

The territories known immediately before the commencement of this Constitution as the Chief Commissioners' Provinces of—

- (1) Delhi, (2) Ajmer-Merwara including Panth Piploda, (3) Coorg.

Part III

DIVISION A

The following Indian States—

- (1) Mysore, (2) Kashmir, (3) Gwalior, etc.

DIVISION B

All other Indian States which were within the Dominion of India immediately before the commencement of this Constitution.



Part IV

The Andaman and Nicobar Islands.

4. There is a formal inconsistency between paragraph (2) of Article 1 and Parts I and II of the Schedule inasmuch as the former refers to "*States* for the time being specified" while the latter sets out certain *territories* but no "*States*". It seems to me very necessary that the Schedule, read with the Article, should authoritatively lay down (i) the names of the States (item 2 of Part II "Ajmer-Merwara including Panth Piploda" is hardly a suitable name for a State!) and (ii) the territory of each State as at the commencement of the Constitution. From this point of view, I suggest the following amendment to Article 1(2):—

For the words "shall mean the States" substitute "and the territories thereof shall be as".

5. Turning next to Part I of the Schedule, I would insert the sub-heading "The Governors' States and the Territories thereof" below the words "Part I", and alter the main heading to read simply "The Territory of India" in conformity with the wording of para (3) of Article 1. A short designation like "Governors' States" is very badly needed both for the purposes of the Draft Constitution itself, and even more, for the purposes of the existing and future laws of the land. "States for the time being specified in Part I of the First Schedule" is a mouthful.

The order in which the "States" are named in this Part is quite illogical, deriving its origin from various fortuitous circumstances connected with the British rule in India. They might be re-arranged in order of population (1941 census) as follows:—

- |                      |                          |
|----------------------|--------------------------|
| 1. United Provinces, | 6. Central Provinces and |
| 2. Madras,           | Berar,                   |
| 3. Bombay,           | 7. East Punjab,          |
| 4. Bihar,            | 8. Orissa,               |
| 5. West Bengal,      | 9. Assam.                |

These would be the names of the new "Governors' States".

We should then insert the following paragraph defining their territories:—

"The territory of each of the above States shall comprise—

(a) the territory which immediately before the commencement of this Constitution comprises the Governor's Province of the same name, and

(b) the other territories, if any, which by virtue of an Order made under section 290-A of the Government of India Act, 1935,

are, immediately before the commencement of this Constitution, administered as if they formed part of that Governor's Province."

6. Proceeding on similar lines, Part II of the Schedule may be revised as follows:—

"Part II

The Chief Commissioners' States and the Territories thereof:

1. Delhi,
2. Himachal Pradesh,
3. Bhopal,
4. Ajmer-Merwara,
5. Kutch,
6. Coorg,
7. Bilaspur.

The territory of each of the States of Delhi, Ajmer-Merwara and Coorg shall comprise the territory which immediately before the commencement of this Constitution comprises the Chief Commissioner's Province of the same name; and the territory of each of the other four States shall comprise the territories which, by virtue of an Order made under Section 290-A of the Government of India Act, 1935, are immediately before the commencement of this Constitution administered as if they were a Chief Commissioner's Province of the same name.

As regards the existing Chief Commissioner's Province of Panth Piploda there is a proposal to transfer administration to the United State of Madhya Bharat by an Order under Section 290-B. It may perhaps be assumed that sooner or later, but before the commencement of the new Constitution, this transfer will take place. If this assumption is incorrect, we shall have to provide in Part II of the Schedule that "the territory of the State of Ajmer-Merwara shall comprise the territories which immediately before the commencement of this Constitution comprise the Chief Commissioners' Provinces of Ajmer-Merwara and Panth Piploda."

7. Before dealing with Part III and what may be called "the Rulers' States and the territories thereof", the constitutional implications of revising Parts I and II on the lines suggested above may be analysed. It will be noticed that by this procedure all the Provincially Merged States and the Centrally Merged States (Groups C and D of para 1 of this note) are *finally* provided for in the new Constitution. Taking Baroda as an example, the present position is that Baroda is an Indian State which originally acceded on the three sub-

jects, but its Ruler has subsequently ceded full jurisdiction to the Dominion Government for the governance of the State, retaining only a nominal vestige of sovereignty, and the State is being administered by the Government of Bombay as agents of the Dominion Government under the Extra-Provincial Jurisdiction Act. Very soon, however, an Order is to be made under Section 290-A of the Government of India Act providing that Baroda and certain other States shall be administered in all respects *as if* they formed part of the Province of Bombay. Even then Baroda will not *become* part of the Province, and will retain its separate identity, however otiose that may be. The Order under Section 290-A will *inter alia* provide for the representation of Baroda in the Provincial Legislature, and there will continue to be 4 representatives of that State in the Constituent Assembly although they may possibly be chosen in a different way.

I suggest that notwithstanding anything contained in Baroda's Instrument of Accession to the Dominion of India (particularly para 7 thereof), the subsequent cession of plenary jurisdiction is sufficient for the Constituent Assembly to make a Constitution binding on Baroda without the necessity of any further public act of the Ruler by way of adopting that Constitution so far as Baroda is concerned. The agreement between the Ruler of Baroda and the Governor-General of India will continue in force as between the Ruler and the President of the Union of India; but so far as the Indian State itself is concerned, the Constituent Assembly is, I think, competent to provide for its complete merger in the newly formed "Governor's State" of Bombay merely by passing Article I and Part I of the First Schedule in the form indicated in para 5 above.

8. Similarly in regard to a Centrally Merged State like Bilaspur or Kutch, I suggest that all that is necessary is for the Constituent Assembly to pass Part II of the First Schedule in the proposed form, and *thereby* give the former Indian State the full status of a Part II State (or "Chief Commissioner's State") within the Union of India to which the Constitution will automatically apply in its entirety.

9. The States remaining to be provided for in Part III are—

(a) whatever Integral States that may be left over between now and the passing of the Constitution and will form part of the Union of India,

(b) the six States Unions, and

(c) possibly also the Khasi Hill States Federation.

The number of Integral States will not exceed six and may be as few as three. The States Ministry should within two months from now be in a position to give the final list of the Integral States and the

States Unions, their names and their territories, when alone Part III could be finalised. For instance, it would be necessary to know whether Hyderabad will come in, whether the territory of Madhya Bharat will include Panth Piploda and whether Saurashtra will include Junagadh, Mangrol, etc.

10. On the assumption that all Part III States will fall into line with Part I States, and accept, with a few absolutely essential modifications, the provisions of Part VI of the draft Constitution as finally passed by the Constituent Assembly of India, we shall have to insert a new Part between Parts VII and VIII of the Constitution consisting of practically one section. This will lay down that the provisions of Part VI shall apply in relation to each of the "Rulers' States" with the modifications, omissions and additions specified in that behalf in a new Schedule. I understand from the Draftsman, Mr. Mukerjee, that he has already taken in hand the preparation of such a Schedule.

11. Next we have to consider the method by which the Rulers' States will adopt the new Constitution and become part of the Union of India. In the case of an Integral State like Mysore which has already set up (by proclamation of the Ruler, I believe) a Constituent Assembly, the most appropriate course would be as follows: The Constituent Assembly of India should first pass all Articles and Schedules of the draft Constitution except the additional Schedule proposed in the preceding paragraph, and then adjourn for a short time. (Such an adjournment would in any event be necessary to enable the Drafting Committee to give the draft Constitution a final revision from the formal point of view). The draft Constitution as more or less finally approved by the Constituent Assembly of India should then be placed before the Constituent Assembly of Mysore. That body should pass a Resolution in due form recommending the modifications of Part VI to be included in the new Schedule so far as Mysore is concerned, accepting the rest of the draft Constitution, and stating that the Constitution as finally adopted by the Constituent Assembly of India in which Mysore is duly represented shall be fully binding on the State of Mysore and its people.

12. A similar procedure could readily be followed by the United State of Saurashtra where a Constituent Assembly has already been set up under the Covenant establishing that State. In regard to the other States, a difficulty arises because although the Covenants contemplate the setting up of Constituent Assemblies for framing constitutions consistently with the provisions of the Covenant and the Constitution of India, such Assemblies have not yet been set up and it is anticipated that their formation will take at least a few months more. If the process outlined in the preceding paragraph is to be

## LETTER TO MEMBERS OF THE DRAFTING COMMITTEE

followed in all the five States' Unions, the final adoption of the Constitution will necessarily be postponed till perhaps the beginning of the next year if not to even a later date. The only other alternative is to arrange for a radical modification of the existing Covenants, and in effect substitute the acceptance of the new Constitution by the Rulers of the Covenanting States for the acceptance by the Constituent Assembly and the Rajpramukh of the United State as originally contemplated in the various Covenants. I doubt whether such a change of procedure at this juncture would be expedient or desirable from the political standpoint. The question is really for the States Ministry to decide after balancing the political factor against the time factor.

13. The Khasi States Federation is *sui generis* and may require a special provision in the Constitution, unless the States Ministry are able to "integrate" it with Assam. These small hill States have formed a Federation of their own and have, both individually and collectively, acceded to the Dominion of India subject to a unique agreement. The Instrument of Accession empowers the Dominion Legislature to make laws for the Khasi States in respect of *any matters*. Constitutionally the position of the Federation is equivalent to that of a Chief Commissioner's Province, since the Centre has full legislative and executive authority, but in practice it has not been treated as such, nor, so far as I know, is it intended to treat it as a Part II State under the new Constitution. Then again in the Agreement which forms part of the Instrument of Accession there is some vague mention of all Khasi territory and legislation as subjects of common interest to Assam and Khasi States. The States Ministry should now consider how exactly these States are to be fitted into the Union.

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## LETTER TO THE MEMBERS OF THE DRAFTING COMMITTEE, WITH LIST OF AMENDMENTS

CONSTITUENT ASSEMBLY OF INDIA

Council House

New Delhi, the 26th September, 1949

Dear Sir,

A meeting of the Drafting Committee will be held at 3 p.m. on Tuesday, the 4th October 1949, in Room No. 25 Ground Floor, Council House, New Delhi.

INDIAN CONSTITUTIONAL DOCUMENTS

I enclose a copy of the revised New Part VI-A containing provisions as to the Constitution of the States in Part III of the First Schedule as circulated to the various States Unions and States by the Ministry of States.

Yours truly,  
Sd/- S. N. Mukherjee  
Joint Secretary.

To

Shri K. M. Munshi,

LIST OF AMENDMENTS WHICH WILL BE NECESSARY IF THE CONSTITUTION OF STATES IN PART III OF THE FIRST SCHEDULE IS INCORPORATED IN THE CONSTITUTION OF INDIA

*New Part VI-A containing provisions as to the Constitution of the States in Part III of the First Schedule*

PART VI-A

THE STATES IN PART III OF THE FIRST SCHEDULE

211-A. The provisions of Part VI of this Constitution shall apply in relation to the States for the time being specified in Part III of the First Schedule as they apply in relation to the States for the time being specified in Part I of that Schedule subject to the following modifications and

Application of provisions of Part VI to States in Part III of the First Schedule.

omissions, namely;—

- (1) For the word "Governor" wherever it occurs in the said Part VI, except where it occurs for the second time in clause (b) of Article 209, the word "Rajpramukh" shall be substituted.
- (2) In Article 128, for the word and figure "Part I" the word and figure "Part III" shall be substituted.
- (3) Articles 131, 132 and 134 shall be omitted.
- (4) In Article 135,—
  - (a) in clause (1), for the words "be appointed" the word "becomes" shall be substituted;
  - (b) for clause (3), the following clause shall be constituted, namely:—

"(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allow-

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ances as the President may, by general or special order, determine.”

- (5) In Article 144, the proviso to clause (1) shall be omitted.
- (6) In Article 148, for clause (1), the following clause shall be substituted, namely:—

“(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and, until and unless provision is made under Article 148A of this Constitution for the creation of a second House, one House.”

- (7) In Article 163, for the words “as are specified in the Second Schedule” the words “as the Rajpramukh may determine” shall be substituted.
- (8) In Article 170, for the words “as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State” the words “as the Rajpramukh may determine” shall be substituted.
- (9) In Article 177, for sub-clause (a) of clause (3), the following sub-clause shall be substituted, namely:—

“(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order.”

- (10) In Article 183, for clause (2), the following clause shall be substituted, namely:—

“(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to any House of the Legislature of the State or, where no such House existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in this behalf by the Rajpramukh of the State, shall have effect in relation to the Legislative Assembly of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly.”

- (11) In clause (2) of Article 191, for the word “Province” the words “Indian State” shall be substituted.
- (12) For Article 197, the following article shall be substituted, namely:—

“197. The judges of each High Court shall be entitled

Salaries, etc. of Judges. to such salaries and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by the President:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

LIST OF AMENDMENTS PROPOSED IN THE PROVISIONS OF THE DRAFT CONSTITUTION OF INDIA (THE CONSIDERATION OF WHICH HAS EITHER BEEN HELD OVER OR NOT YET BEEN TAKEN UP BY THE CONSTITUENT ASSEMBLY IN VIEW OF THE CHANGES THAT HAVE TAKEN PLACE IN THE CONSTITUTION AND ADMINISTRATIVE POSITIONS OF THE INDIAN STATES AND THE PROPOSED INSERTION OF A NEW PART VI-A)

Article 224. Article 224 be omitted.

Article 225. Article 225 be omitted.

Article 235A (New). After Article 235, the following new article be inserted, namely:—

"235. (1) Notwithstanding anything in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union."

Article 236. For Article 236, the following article be substituted, namely:—

"236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

Article 237. Article 237 be omitted.



**Article 267A.** (New) In Chapter I of Part IX, after Article 267, the following new article shall be inserted, namely:—

“267A. (1) Where under any Covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such state as Privy Purse,—

- (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
- (b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Union under clause (1) of this article and for such period as may be determined by order of the President.”

**Article 274 DD** (New) After article 274D, the following new article be inserted, namely:—

“274DD. Notwithstanding anything contained in the foregoing provision of this Part, the President may enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under Article 260 of this Constitution he thinks it necessary to do so.”

**Article 302A.** (New) After Article 302, the following new article be inserted, namely:—

“302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in

**Rights and privileges of Rulers of Indian States.** the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such Covenant or agreement as is referred to in Article 267A of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

**Articles 306A and 306B.** (New) After Article 306, the following new articles be inserted:—

**Temporary provisions with respect to the State of Jammu & Kashmir.** "306A. Notwithstanding anything contained in this Constitution, until such date as the President may by public notification announce to be the date on which this article shall cease to be operative,—

- (a) the power of Parliament to make laws for the State of Jammu and Kashmir shall be limited to those matters in the Union List which the President, in consultation with the Government of that State, may by order specify;
- (b) the provisions of Article 211A of this Constitution shall not apply in relation to that State; and
- (c) the provisions of Part V and Parts IX to XVII of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify.

**Temporary provisions with respect to States in Part III of the First Schedule.** 306B. Notwithstanding anything contained in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution.

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order."

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**Article 308.** After clause (3) of Article 308, the following clause be inserted:—

“(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgement, decree or order of any court within that State shall cease and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of by, the Supreme Court.”

**Article 310.** Article 310 shall be re-numbered as clause (1) of article 310, and to the said article as so renumbered the following be added:—

“(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clause (1) of Article 193 of this Constitution but subject to the proviso to that clause, continue to hold office until the expiration of such period as the President may by order determine.”

**Articles 312A and 312B.** (New) After article 312, the following new articles be inserted, namely:—

“312A. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Provisions as to Provisional Legislatures in States in Part III of the First Schedule.

312B. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made,

Provisional Council of Ministers for States in Part III of the First Schedule.

all persons holding office as Ministers immediately before the commencement of this Constitution in the corresponding Indian State shall become members of the Council of Ministers of such Rajpramukh under this Constitution."

**First Schedule.** For the First Schedule the following be substituted:—

**"First Schedule**

(Articles 1 and 4)

**The States and the Territories of India**

**Part I**

<i>Names of Provinces</i>	<i>Names of corresponding States</i>
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbh	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. Uttar Pradesh	United Provinces

The territories of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province (except, in the case of Madras, the Laccadiv, Maladiv and Minicoy Islands) and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

**Part II**

1. Ajmer
2. Bhopal
3. Bilaspur

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4. Coorg
5. Cooch-Behar
6. Delhi
7. Himachal-Pradesh
8. Kutch
9. Manipur
10. Rampur
11. Tripura

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Chief Commissioners' Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioners' Province of the same name.

The territory of each of the other States shall comprise the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before the commencement of this Constitution administered as if they were a Chief Commissioners' Province of the same name.

### Part III

1. Hyderabad
2. Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala and East Punjab States Union
6. Rajasthan
7. Saurashtra
8. Travancore-Cochin
9. Vindhya-Pradesh

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Kathiawar (Saurashtra), and the territories which immediately before such commencement were administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian States.

Part IV

1. The Andaman and Nicobar Islands
2. The Laccadiv, Maladiv and Minicoy Islands.”

**Fourth Schedule.** For the Fourth Schedule, the following be substituted, namely:—

“Fourth Schedule

[Article 144(4)]

Instructions to the Governors and Rajpramukhs

1. In these instructions, unless the context otherwise requires, the term “Governor” shall include every person for the time being discharging the functions of the Governor according to the provisions of this Constitution and the term “Rajpramukh” shall include every person for the time being discharging the functions of the Rajpramukh according to such provisions.

2. In making appointments to his Council of Ministers, the Governor or the Rajpramukh, as the case may be, shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in the Legislature as the Chief Minister, and then to appoint on the advice of the Chief Minister, those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature.

3. In the exercise of the powers conferred upon the Governor or the Rajpramukh, as the case may be, by this Constitution, the Governor shall, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, and the Rajpramukh shall, subject to the provisions of Article 306B of this Constitution, be guided by the advice of their respective ministers. .

4. Without prejudice to the generality of his powers as to reservation of Bills, the Governor or the Rajpramukh, as the case may be, shall not assent to, but shall reserve for the consideration of the President any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.

5. The Governor or the Rajpramukh, as the case may be, shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic wel-

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fare, tending to fit all classes of the population to take their due share in the public life and government of the State, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments."

LIST OF AMENDMENTS PROPOSED IN THE PROVISIONS OF THE DRAFT CONSTITUTION OF INDIA ALREADY AGREED TO BY THE CONSTITUENT ASSEMBLY AT THE CONSIDERATION STAGE.

**Article 3.** For clauses (a) and (b) of the proviso to Article 3, the following be substituted:—

"Where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President."

**Article 47.** For the Explanation to clause (2) of Article 47, the following Explanation be substituted:—

"Explanation.—For the purposes of this clause, a *person* shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State."

**Article 55.** For the Explanation to clause (4) of Article 55, the following Explanation be substituted:—

"Explanation.—For the purposes of this clause, a *person* shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State."

**Article 67.** Clause (9) of Article 67 be omitted.

**Article 83.** For sub-clauses (a) and (b) of clause (2) of Article 83, the following be substituted:—

"he is a Minister either for the Union or for such State."

**Article 92.** In paragraph (iii) of sub-clause (d) of clause (3) of Article 92, for the words "exercises or immediately" the words "exercises jurisdiction within any area included in the territory of India or which at any time" be substituted.

**Article 100.** Clause (2) of article 100 be omitted.

**Article 109.** For the proviso to article 109, the following proviso be substituted:

“Provided that the said jurisdiction shall not extend to:—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.”

**Article 119.** Article 119 be renumbered as clause (1) of Article 119, and to the said article as so renumbered, the following clause be added:—

“(2) The President may, notwithstanding anything contained in clause (i) of the proviso to Article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report the fact to the President.”

**Article 248B.** In clause (2) of Article 248B, after the word “Governor” the words “or Rajpramukh of the State” be inserted.

**Article 263.** In clause (2) of Article 263 after the word “Governor” the words “or Rajpramukh” be inserted.

**Article 303.** For sub-clause (nn) of clause (1) of Article 303, the following sub-clauses be substituted:—

“(nn) Rajpramukh means—

- (i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
- (ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognized by the President as the Maharaja of that State; and
- (iii) in relation to any other State for the time being specified in Part III of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State, and includes in relation to any of the



## AMENDMENTS PROPOSED BY THE MINISTRY OF STATES

said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;

(nnn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such Covenant or agreement as is referred to in clause (1) of Article 267A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;"

**Seventh Schedule.** (1) In List I of the Seventh Schedule, after entry 43, the following entry be inserted:—

"subject to the provisions of entry 43A of List I."

N.B.—*Necessary amendments for the substitution of the word "Rajpramukh" for the word "Ruler" in other provisions of the Draft Constitution already agreed to at the second reading will also have to be made.*

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## AMENDMENTS PROPOSED TO BE INCORPORATED IN THE NEW CONSTITUTION, BY THE MINISTRY OF STATES

When the States entered the Constituent Assembly of India, it was thought that the Constitution of the States would not form part of the Constitution of India. It was also clearly understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of these commitments and the conditions then obtaining the framers of the draft Constitution of India made certain special provisions which placed the States, in certain important respects, on a footing different from that of the Provinces.

2. As a result of the policy of integration and democratization of States pursued by the Government of India since December, 1947, the internal and external set-up of the States has undergone a radical change; these changes have greatly accelerated the process of approximating the position of the States, both in respect of their internal structure and their relationship with the Centre, to that of the Provinces, a task which has been engaging the States Ministry's constant attention.

3. The Covenants establishing the various Unions of States provide that within the framework of the Covenant and the Constitution of India, the constitutions of the various Unions are to be framed by their respective Constituent Assemblies. In order to ensure that the Constitutions of the Unions of States are drawn up on a uniform basis and generally follow the Provincial Constitution, a committee was appointed with Shri B.N. Rau as Chairman to draft a model constitution for the States which was to serve as a guide to the Constitution-making bodies of the States in framing the Constitution for their respective States. Subsequently, as a result of the discussions that the Ministry of States had with the Premiers of the various Unions, it was decided that the Constitution of the States should also form an integral part of the Constitution of India and that appropriate procedure should be devised for the ratification of the whole of the Constitution of India by the States and Unions along with the part relating to the internal constitution of the States.

In view of these important developments it has become necessary to recast a number of the provisions of the Constitution in so far as they relate to the Indian States. The Ministry of States have already discussed with the Drafting Committee the amendments which they would like to have incorporated in the new Constitution, and agreement has been reached on a large number of them. Some of the amendments, however, required further examination. This has now been done and the views of the Government of India in the Ministry of States in respect of them are set out in the following paragraphs.

*(i) Procedure for the ratification of the Constitution by the States*

The draft Constitution of India contains no specific provision regarding the procedure for the ratification of the Constitution by the States although Article 225 of the draft Constitution presupposes some kind of agreement or Instrument in respect of the accession of the States.

After detailed examination of the various aspects of the matter, the Government of India in the Ministry of States have decided that the acceptance of the Constitution, of which the new chapter relating to States included in Part III of the First Schedule should be an integral part, should be by the Rajpramukh or the Ruler, as the case may be, on the basis of a resolution to be adopted by the Constituent Assembly or the legislature of the Union or the State concerned where such a body exists. In the Unions where no Constituent Assemblies have yet come into existence, the Rajpramukh

should accept the Constitution, but in his Proclamation or any other Instrument for the acceptance of the Constitution, a provision should be made enabling the first legislature of the Union to recommend, within the framework of the Constitution of India, any modifications in the provisions of the Constitution in so far as they apply to the States. This formula has been evolved to meet the difficulty arising out of the fact that constitution-making bodies are not likely to come into existence in some of the Unions by the time the new Constitution is to come into operation. The objective underlying the proposed arrangement is that, whereas the whole of the Constitution will become operative in all the States and the Unions as soon as it comes into force, it will be a good political gesture to the popular opinion in the Unions in which no Constituent Assemblies have yet come into existence, if their first legislatures are enabled to express their views on such provisions of the Constitution as are not considered fundamental. These views will assume the form of recommendations and it will be open to the Union Parliament, which is expected to exercise Constituent powers for a period of five years or so, to accept or reject them. This arrangement will be in conformity with the spirit of the Covenants establishing the various Unions which specifically empower the Constituent Assemblies of the Unions to frame Constitutions for the various Unions.

(ii) *Position of Hyderabad*

In view of the special difficulties arising in respect of Hyderabad, the Government of India have examined several alternatives as to the position that should be assigned to this State in the Constitution. The suggestion which was provisionally placed before the Drafting Committee on behalf of the Ministry of States at its meeting held on 19th July was that we might secure an Instrument of Accession or a Proclamation from the Nizam authorising the Constituent Assembly to frame a Constitution for Hyderabad in the same manner as the heads of other States would adopt. However, having regard to our commitments, we might make Hyderabad's accession a provisional one and specifically state that the accession of the State will be subject to ratification by the people of Hyderabad. It is considered that this procedure would not be inconsistent with our past pronouncements on the political future of Hyderabad and would, at the same time, enable us to include Hyderabad in the category of Part III States. The Ministry of States have been definitely of the view that in the new Constitution Hyderabad should be shown as forming part of the territory of India.

During the course of the discussions on the subject at the meeting of the Drafting Committee, certain other alternatives were

also suggested. One suggestion was that we might have a separate category of States classed as Part V and make a special provision in respect of these States. Sikkim might be another State to be put in this category. These States might be in the nature of protected States to be governed on the basis of agreements ensuring their virtual accession in respect of the three subjects of Defence, Foreign Affairs and Communications. The third alternative which was considered was that the State might be governed by Article 236, which enabled the Union to undertake executive legislative or judicial functions in an Indian State not specified in the First Schedule. This article provides for the exercise of jurisdiction in relation to any territory not being part of the territory of India. There was a further suggestion that the State might be put in Part II (Chief Commissioner's Provinces) of the First Schedule.

The Government of India have considered the various alternatives and are of the view that it is necessary to treat Hyderabad as part of the territory of India and that the proposal already placed by the Ministry of States before the Drafting Committee would meet best the requirements of the case.

*(iii) Position of Jammu and Kashmir State*

The Government of India have also carefully considered the position of Jammu and Kashmir State in the context of their international commitments. Ordinarily, they would have liked to treat this State like other States in the category of Part III States. The main difficulty in adopting this procedure is that the Premier of this State has definitely expressed his inability to extend the content of the accession of the State till the Constituent Assembly of the State has taken a decision in the matter. Against the present background, he is most anxious that the accession of the State should continue in respect of three subjects of Defence, Foreign Affairs and Communications only. During the course of the discussion at the Drafting Committee meeting, it was pointed out that the scheme embodied in the Draft Constitution visualised that all States in Part III would accept List I and List II and in addition accept all provisions relating to fundamental rights and the provisions relating to High Courts and Supreme Court. It was further pointed out that if the quantum of accession of Kashmir State was not extended, difficulties would arise in respect of the citizenship of the subjects of Kashmir State as also in connection with the operation of the provisions regarding fundamental rights and Supreme Court in respect of this State. The Government of India have considered the matter in its various aspects and are of the opinion that in view of the present peculiar situation in respect of Jammu and Kashmir State

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it is desirable that the accession of the State should be continued on the existing basis till the State could be brought to the level of other States. A special provision has therefore to be made in respect of this State on the basis suggested above as a transitional arrangement. It may be added that 'naturalisation' is already covered by the existing Instrument of Accession signed by the Ruler of the State and this may perhaps meet the requirements in respect of citizenship of the subjects of this State.

The Ministry of States suggest for the consideration of the Drafting Committee the following approach to this question:—

(1) Jammu and Kashmir State may be treated as part of the Indian territory and shown in States specified in Part III of Schedule I.

(2) A special provision may be made in the Constitution to the effect that until the Parliament provides by law that all the provisions of the Constitution applicable to the States specified in Part III will apply to this State, the power of the Parliament to make laws for the State will be limited to the items specified in the Schedule to the Instrument of Accession governing the accession of this State to the Dominion of India or to the corresponding entries in List I of the new Constitution.

### (iv) *Privy purse payments*

Under the terms of the Covenants and Agreements of merger, the Government of India have guaranteed to the Rulers of the merged and integrated States payment of the privy purse amounts fixed under the terms of these Covenants and agreements. As a result of the fixation of the Rulers' privy purse on a reasonable and clear-cut basis, there has been a very considerable saving in respect of the expenditure incurred in the past on the Rulers and members of their families. Even though there had been belated and half-hearted efforts by the late Political Department to lay down some kind of scale to govern the privy purse of the Rulers, in most of the States there was no distinction between the expenditure on the administration and the Rulers' privy purse, and even where the Rulers' privy purse had been fixed, no effective steps were taken to ensure that no expenditure expected to be covered by the privy purse was directly or indirectly charged on the revenues of the State. Large amounts therefore, were spent on the Rulers and members of the ruling family and marriage functions and ceremonies in connection with them. All the agreements of merger and Covenants now provide for the fixation of the Ruler's privy purse which is intended to cover all the expenses of the Rulers and their families including the expenses on their residences, marriages and other ceremonies,

etc. The privy purse guaranteed under these agreements is less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankarrao Deo, and Dr. Pattabhi Sitaramayya. It is calculated on the basis of 15 per cent on the first lakh of average annual revenue of the State concerned, ten per cent on the next four lakhs and seven and a half per cent on above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognised as viable and the amounts fixed in such cases are payable during their life-time only. It is estimated that as a result of the integration and the merger of the States, there will be an annual saving of several crores on the expenditure incurred on the Rulers and their families. It may also be added that large amounts of cash balances and securities have also been surrendered by the Rulers to the successor Government.

During the course of the discussions with the Indian States Finances Enquiry Committee, it was urged before the Committee by most of the States that the liability for paying privy purses of Rulers should be taken over by the Centre on the grounds that (1) privy purses have been fixed by the Centre, (2) privy purses are political in nature; and (3) similar payments are not made by Provinces. The States have been generally averse to their fiscal integration as it involves, from their point of view, surrender of their fiscal autonomy. The main ground on which we have urged the States to fall in line with the Provinces under the new set-up has been that under the new Constitution there should be no distinction between the Provinces and the State either in the Political or in the fiscal field. So far as the Provinces are concerned, there is also reluctance on their part to take over the additional burden relating to privy purses.

Under the terms of the Covenants establishing the various Unions of States and agreements of merger, privy purses are payable to the Rulers out of the revenues of the States concerned, and the position of the Government of India is that of a guarantor. This position has been somewhat altered by subsequent developments. In the first instance, so far as the merged States are concerned, with their total extinction, under the new Constitution of India, as separate entities, the States from the revenues of which privy purses are payable to the Rulers of merged States, will cease to exist. Secondly, the term 'revenues of the State' has now to be viewed in the context of the recommendations made by the Indian States Finances Enquiry Committee. Federal financial integration of States, as work-

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ed out by this Committee, involves a twofold process, one of 'functional partition' of the 'composite' State Governments and the other, of 'merger' of the partitioned 'federal' portions of the State Governments with the Central Government. Essentially, therefore, the matter has to be viewed in the light of the fiscal integration of the States, which will have an effect of lasting character upon the economy of the whole of the country. The federal financial integration will ensure uniform sources of federal revenue and equal contributions to federal finances which follow from the concept of the sovereignty of the people and equality of the Provinces and the States. It will also effectively patch up the disruptive trends in the economy of India, which rendered effective implementation of the economic policies in the Provinces impossible. Thus, for instance, in the matter of Income-tax evasion alone, the gains from federal financial integration will prove very substantial. It is after giving careful consideration to all these aspects of the matter that the Ministry of States have come to the conclusion that privy purse payments should constitute a charge on the revenues of the Indian Union.

The total annual privy purse commitments so far made amount to Rs. 4,66,73,539/-; when the amounts guaranteed to certain Rulers during their life-time are no longer payable, the total annual expenditure in respect of privy purses will amount to Rs. 3,89,98,535/-. It is not intended that the Centre should assume full liability for these payments as soon as the federal financial integration of States becomes effective. It is contemplated that there would be a transitional period not exceeding ten years, during which this liability will be shared between the Centre and the States on an equitable basis. Details of these arrangements are being worked out in consultation with the Ministry of Finance with due regard to the interests of the Centre and the Provinces and States. Apparently, the constitutional arrangements that would best secure the objective in view would be that the Constitution should

- (a) provide that payments guaranteed under the Covenants or agreements of merger shall be a charge on the Consolidated Fund of India; and
- (b) authorise the President
  - (i) to regulate the manner in which these payments are to be made; and
  - (ii) to prescribe the sums, if any, which the States may be required to pay into the Consolidated Fund of India as contribution towards the privy purse payments guaranteed to the Rulers of the merged and integrated



States, and the period over which the payment of such contributions might extend.

It will not be inappropriate to mention here that the privy purse payments guaranteed by the Government of India should not be viewed in isolation, but in the context of the momentous developments affecting the most vital interests of the country. These guarantees form part of the historic settlements, which enshrine in them the consummation of the great ideal of Geographical, Political and Economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever, even after the advent of Indian Independence. It is hardly necessary to recall in this connection the constitutional implications of the lapse of paramountcy and of the provision in the Indian Independence Act releasing the States from all their obligations to the British Crown. There was, no doubt, recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically contiguous. Since, however, this was a matter left for ultimate decision of the Ruler of each State, this made the position of the Indian Dominion very difficult. Lord Mountbatten in his opening address to the Conference of Rulers held on 25th July, 1947, recognised that with the lapse of paramountcy the States would have complete freedom and that technically and legally they would be independent. He also recognised that the States were theoretically free to link their future with whichever Dominion they might care although in saying so he referred to certain geographical compulsions, which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare Independence and others to join the neighbouring Dominion. The fact that the Government of India did not recognise any such right of the Rulers did not improve the matters very much. If the Rulers had exercised their right, there is no doubt that they would have found considerable support from influential elements both in India and abroad. Some important States did actually announce their intention of remaining independent. A few Rulers started negotiations with both the Dominions and tried to use the opportunity not for the stability of the country or the State but for their personal advantage. Disruptive tendencies which had been sedulously cultivated and encouraged were assuming menacing proportions and proposals for not only one but for several Rajasthans were in the air. There were not a few who nursed the hope that overwhelmed by the combined weight of the partition of India



and the disruption of the States the Government of India would go under.

It was against this unpropitious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they could remain as they were except for accession on three subjects. Not only in the announcement of the Honourable Minister for States, but also in the address of Lord Mountbatten to the Princes, it had been made clear that *accession on three subjects did not imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the New Constitution of India*. It is against these commitments that the States Ministry had to approach the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have caused serious repercussions. If the Rulers had chosen to keep out of the integration arrangements, they would have continued to draw the heavy civil lists that they used to draw before, and in a large number of cases they could have enjoyed unrestricted use of their State revenues. The minimum that we could offer to them as a *quid pro quo* for parting with their ruling powers, therefore, was to recognise the continuance of the institution of the Rulership for the purposes only of civil list and certain personal privileges on a reasonable and defined basis. The privy purse settlements, therefore, and the guarantee that the personal privileges and the rights of the Rulers will continue, are in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. The capacity for mischief and trouble on the part of the Rulers, if the settlement with them had not been reached on a negotiated basis, was far greater than could be imagined at this stage. The privy purse settlements and the guarantees regarding personal privileges of the Rulers should, therefore, be viewed as the price paid for this bloodless revolution which has affected the destinies of millions of people of this country. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The only obligation under these agreements that has to be discharged by us is to ensure that the guarantees given by us in respect of privy purse and personal privileges are fully implemented. This could only be possible if we guarantee these pay-

ments under constitutional provisions. Any other alternative would be a breach of faith and seriously prejudice the stabilisation of the new order.

Under the terms of the merger agreements all the privy purses of the Rulers are to be free from all taxation. The exemption in respect of taxation applies only to the amounts of privy purses and does not extend to any other income of the Ruler or the income of the members of their families. The right of the Rulers to this exemption had to be accepted because in their own territories the Rulers were recognised as sovereigns and were free from all kinds of taxation. The Ministry of States, therefore, propose that a provision should also be made in the Constitution that privy purse payments shall be exempt from income-tax.

*(v) Guarantees given to the Rulers under various covenants and agreements in respect of rights and privileges*

Guarantees have been given to the Rulers under the various agreements and covenants in respect of such matters as their succession to the gadi and continuance of their rights and privileges. In a memorandum issued on the subject we have already made it clear that it was neither desirable nor practicable to draw up an exhaustive list of the privileges enjoyed by the Rulers. Nor do the Ministry of States consider it desirable that any of the provisions of the covenants and agreements of merger should become justiciable; if these agreements were allowed to be justiciable, there would be a perpetual cause for regret. The Ministry have, therefore, already suggested to the Drafting Committee that Article 109 should be so worded as to exclude specifically the agreements of merger and the covenants from the jurisdiction of Supreme Court or any other Courts. At the same time, the Ministry of States are anxious that constitutional recognition should be given to the obligations which the Government of India have assumed under the various agreements and covenants. The object is to allay the fears of the Rulers and to emphasise the moral obligation of the Government of the Union of India to honour these commitments. This is the only alternative to making these agreements justiciable.

*(vi) Control of the Government of India over the States during the transitional period*

The States and the Unions of States have to make up the leeway of ages to assume the position of full fledged constituent units of the Union of India. Having regard to the magnitude of the task that confronts the Governments of the Unions in the transitional period and to the fact that neither the services inherited by them nor the

political parties as at present organised are in a position to assume unaided full responsibilities of the administration, a provision has been made in the Covenants for the formation of the various Unions to the following effect:—

“Notwithstanding anything contained in this Covenant, until a constitution framed by the Constituent Assembly comes into operation after receiving the assent of the Raj Pramukh, the Raj Pramukh and the Council of Ministers chosen by him under Article V of this Covenant, shall in the exercise of their functions under the provisions of this Covenant be under the general control of, and comply with such particular directions if any, as may from time to time be given by, the Government of India”.

The Government of India are of the view that in the interest of proper evolution of these Unions, it is necessary that the Central Government should retain their control over the Governments of the Unions for five years even after the Constitution of India becomes operative. It is not the intention of the Government of India that the legislature of the Union, where one is in existence, should be prevented in any manner from holding the Ministers responsible to it in the framing of their policies and in the conduct of the administration. At the same time it is inevitable that to the extent that the Union Governments act in pursuance of the directions of the Government of India, they should be acquitted of responsibility to the Union Legislature. It is, therefore, proposed that a provision to that effect may be made in the Constitution.

*(vii) Entries in the legislative lists*

The Ministry of States have also examined the entries in the various legislative lists in so far as they relate to the States. It has been decided to omit such entries as the one relating to the Indian State railways to ensure that the legislative power of the Union is co-extensive with the Union's legislative authority over the Provinces. There is one such entry, however, which needs consideration. This entry is No. 4 in List I of the Seventh Schedule to the draft Constitution; it reads as follows:—

“4. The raising, training, maintenance and control of the naval, military and air forces of the Union and their employment; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule”.

The first part of this entry relates to the whole territory of the Indian Union. The second part of it relates only to States in Part III of the First Schedule. The Indian States Forces have so far been

governed by the agreements subsisting between the States and the Government of India, which have been continued under the Standstill Agreements. Under these agreements, the strength and organization of the Indian States Forces were in the past determined by the Crown Representative and are now determined by the Government of India. These Standstill Agreements will continue to be in force until they are terminated by mutual agreement.

The scheme that governs the Indian States Forces assigns to them a definite role in the overall defence structure of India as well as for maintaining the internal security and provides for the maintenance by them of appropriate standards of efficiency and equipment. The number of States which maintained the armed forces before August 15, 1947, was less than fifty. Since then a large number of these States have merged and the process of integration of the forces of these in the Indian Army is going apace.

Apart from the agreements governing the Indian States Forces, a special provision has been made in the Covenants establishing the various Unions of States, the provisions of which have been guaranteed by the Government of India, in respect of the forces of these Unions. This provision is to the following effect:

“Subject to any directions or instructions that may from time to time be given by the Government of India in this behalf, the authority to raise, maintain and administer the military forces of the United State shall vest exclusively in the Raj Pramukh”.

After prolonged discussions, to which the Defence Ministry was a party, it has been decided that all forces other than the forces in Madhya Bharat, Saurashtra, Pepsu and Rajasthan should be absorbed in the Indian Army. The forces of the Unions other than the said four Unions will be absorbed in the Indian Army before the new Constitution becomes operative.

In the case of the forces of these four Unions also, as a result of the recent discussions, it has been decided that not only the strength and organization of the forces will be determined by the Government of India with reference to the overall requirements of the troops for defence and internal security, but that the personnel of the Unions forces will take an oath of allegiance to the Central Government and that these forces will be under the operational control of the G.O.C.-in-C of the Indian Army command in which the Union is located. It has been further decided that in each Union an officer selected by the Government of India will be appointed as the G.O.C. of the armed forces of the Union concerned. Further measures, such as interchangeability of officers between the Indian

army and the Union have also been decided upon to fit in more closely the Union forces into the defence structure of India and to bring them up to the level of the Indian Army. While these measures are being taken to integrate the States forces as regular units of the Indian Army, it is evident that in the case of Madhya Bharat, Saurashtra, Pepsu and Rajasthan Unions and one or two other States such as Mysore and Hyderabad, there will be, when the new Constitution comes into operation, forces other than those raised by the Indian Union. It is no doubt intended that in course of time the forces of these Unions should also form an integral part of the Indian army, but until that happens, it is therefore necessary to have a provision in the Constitution for regulating these forces. If the later part of Entry 4 in List I is omitted, the Union Parliament will not have any power to regulate these forces in as much as they will not be forces of the Indian Union within the meaning of entry 4 as it will stand after the deletion of its later part. Even under the existing arrangements, although the States have acceded on "naval, military and air forces of the Dominion", the armed forces raised and maintained by an acceding State are not included in naval, military and air forces of the Dominion. The consequence of the omission of the later part of the entry may, therefore, be that neither the Indian Parliament nor the Legislatures of the Unions or States concerned, will have any power to regulate these forces. It is, therefore, essential that the Constitution should recognise the existence of these forces and provide for them.

As already stated, the States Ministry propose to bring about a complete absorption of the States forces in the Indian army by degrees. Meanwhile, a plan has been evolved under which the Government of India would be accused by the Raj Pramukhs of going back on provisions made in the Constitution about these forces, the Government of India would be accused by the Raj Pramukhs of going back on the Covenants, the provisions of which have been guaranteed by the Government of India, and at the same time create an awkward position in respect of these forces when the new Constitution comes into operation.

It has been pointed out that the legislative power of the States having been limited by the entries enumerated in List II of the Seventh Schedule, those States would have no power to legislate in respect of any of the matters relating to the armed forces not included in that List. The Ministry of States recognise that it would be inadvisable to insert in List II a provision corresponding to the later part of entry 4 in List I. Nothing could be farther from the intentions of this Ministry than to permit the States specified in Part III of First Schedule to raise any forces and to employ them as they like.

In fact the Ministry would welcome a substantive provision in the Constitution making it clear beyond doubt that the forces of the Indian States would form an integral part of the forces of the Indian Union. At the same time provision should also be made to meet the requirements of these forces until they are absorbed in the Indian Army as regular units. It is, therefore, suggested that a new Article may be inserted in the Constitution somewhat to the following effect:—

- “(1) The armed forces raised and employed in any of the States for the time being specified in Part III of the First Schedule shall form part of the forces of the Union of India.
- (2) Until the Parliament otherwise provides by law, the raising, training, maintenance and control of the said forces shall be regulated in such manner as the President may, by general or special order, prescribe”.

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MEMORANDUM SUBMITTED BY THE GOVERNMENT OF  
ORISSA TO THE CONSTITUENT ASSEMBLY

(i)

*Comments on the position of acceding States*

The Government of Orissa have since subjected the matter to a closer examination and are confirmed in their view that the plan of administration of the Orissa group of States formulated by the drafting committee is wholly unsatisfactory and would probably be completely unacceptable to all parties concerned. In essence the plan is that those States which have ceded their full and exclusive authority, jurisdiction and powers to the Government of India will under the new constitution be administered on the same lines as centrally administered areas. Article 212(1) of the draft constitution provides that the areas which are now centrally administered will in future be administered through a Chief Commissioner or a Lieutenant Governor to be appointed for the purpose by the Central Government or through the Governor of a neighbouring province or the Ruler of a neighbouring State. The proviso to article 212(1) makes it clear that the Central Government can entrust the administration of a centrally administered area to the Governor of a neighbouring province or the Ruler of a neighbouring State if two conditions are fulfilled: viz.,

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- (i) the Governor or the Ruler concerned agrees to take over its administration; and
- (ii) the people of the centrally administered area also agree that the Governor or the Ruler concerned should take over its administration.

2. If the above scheme of administration is applied to the States which have ceded their jurisdiction, authority and powers to the Government of India, the following consequences will clearly ensue:—

(a) All States which have acceded to the Indian Dominion and which have thereafter ceded their jurisdiction to the Government of India will for ever retain their territorial integrity and individual political entity including such small States as Aligarh and Tigrira. All these Orissa States will in due course presumably be mentioned individually under division B of Part III of the first schedule to the draft constitution. Unlike the United State of Kathiawar, Orissa States have not effected any recognized merger among themselves to form a larger unit; and each of them has separately and individually ceded its authority, jurisdiction and powers to the Government of India. Presumably therefore each of them will be specifically and individually mentioned under division B of Part III of the first Schedule and will for all time to come retain their individual political entity. The Provincial Government are not sure that it is still possible for the Ministry of States to bring about a union of some sort of all the 25 Orissa States, which have ceded their jurisdiction, prior to the inauguration of the new constitution. In case such Union is possible and is effected, the United States of Orissa will form one political unit just as the United State of Kathiawar. Individual States will then lose their separate political entity, and the whole area covered by the 25 States will be administered as a single centrally administered area.

(b) The question whether any of the Orissa States which has ceded jurisdiction will be administered by the Governor of Orissa on behalf of the Central Government, as a centrally administered area, will be determined in accordance with the wishes of the Governor (who would presumably be advised in this matter by his Ministers) and the wishes of the people of the State concerned. Unless both the parties are agreed that the Governor of Orissa should administer the State, it will have to be administered through a Chief Commissioner or a Lieutenant Governor to be appointed by the Central Government or alternatively (if this is acceptable to the parties concerned) by the Ruler of a neighbouring State, such as Mayurbhanj who has not ceded



his authority and jurisdiction to the Government of India. If a union of all the 25 States is formed, it would not be necessary to ascertain the wishes of the people of each individual State; but it will be necessary to ascertain the wishes of the people of all the 25 States collectively as all of them will form one political unit, that is, a 'State' as defined in the new constitution.

(c) Assuming that the Governor of Orissa is by common consent entrusted with the administration of the Orissa States, the Governor will administer them as an agent of the Central Government. It is not very clear whether in this event

- (i) the Governor will administer the area independently of his Provincial Ministers and will, for its satisfactory and efficient administration, be responsible to the Dominion Government and through them to the Dominion Legislature; or
- (ii) the Governor will, while administering such an area, be advised by his Ministers, but the Ministry will be responsible not to the Provincial legislature but to the Dominion Government and through them to the Dominion Legislature.

In either case, however, the States will remain a centrally administered area; in fact, each State will be a separate centrally administered area, unless there is a union of all the States before the new constitution is finally enacted.

(d) The provisions of article 213 of the draft constitution will apply, by virtue of clause (2) of article 212, to each Orissa State, or if there is a prior union of the States, then to the larger unit. The creation of a local legislature and/or a Council of Advisers will, however, be permissible only if the States are administered through a Chief Commissioner or a Lieutenant-Governor. If their administration is by common consent entrusted to the Governor of Orissa, it will not be possible to create or continue any local legislative bodies or advisory councils. The legislature for the States will then obviously be the central legislature. Whether legislative authority can be, and if so will be, delegated to the Governor is by no means certain.

(e) It follows from what has been explained in the preceding sub-paragraph that in case the Governor of Orissa is entrusted with the administration of the States, it will not be possible to continue even the present system of administration, which the Provincial Government have devised in exercise of the powers and authority delegated to them under the Extra-Provincial Jurisdiction Act. That Act will have to be adapted to fit in with the new Constitution Act, and as far as the Provin-



cial Government can judge, it will not be possible to take power in the adapted Act to modify in any way the constitutional scheme as envisaged in Article 212(2), in regard to the States coming within the purview of that article. If indeed the scope of the adapted Act is restricted to jurisdiction outside the States as defined in the draft constitution (there will be no administrative units known as Provinces), then the Act will apply only to areas which are at present not included in either the Provinces or the Indian States. This means that it will not be possible to associate popular opinion in any manner with the Governor's administration of the Orissa States, and it will be impossible to continue the local advisory committees or the States Assembly or the Executive Council, which the Provincial Government have set up to aid and advise them in the day-to-day administration of the States.

(f) The Provincial Government have no doubt that if the wishes of the people were ascertained with reference to the constitutional scheme visualised by the drafting committee, they would almost to a man vote against any suggestion that the administration of the States should be conducted through the Governor of Orissa. This is only natural, because were the States to be administered through the Governor of Orissa, the people of the States would be completely deprived of any kind of participation in the task of administration, in other words, of even a modicum of self-government. Actually it seems to the Provincial Government that the alternative of administration of a "ceded" State through the Governor of a neighbouring province or the Ruler of a neighbouring State is intended to apply to isolated small and undeveloped States which are not yet fit for local autonomy in any form and in respect of which the question of associating popular opinion with its administration is of no importance. For a group of partially developed States like the Orissa States, which cover a large contiguous area and have a considerable population, of which the more advanced section are definitely politically conscious and keen on full participation in the task of local administration, the alternative which would have obviously to be adopted is governance through a Lieutenant-Governor or a Chief Commissioner.

(g) Assuming that the States will be administered through a Chief Commissioner or a Lieutenant-Governor and not through the Governor of Orissa, the constitutional scheme proposed by the drafting committee implies that the Chief Executive may or may not have a local legislature and/or a Council of Advisers.

It is unthinkable that each of these Orissa States including the smallest ones should have a separate legislature and a separate advisory council. Even assuming, however, that they are formed into a union prior to the inauguration of the new constitution and are then given a common local legislature as well as an advisory council under a Lieutenant Governor or a Chief Commissioner, the type of local autonomy which they will enjoy will naturally be very limited and fall far short of "provincial autonomy."

3. If the implications of the constitutional set-up proposed for the States, which have ceded their authority and jurisdiction to the Central Government, have been correctly appreciated in the preceding paragraph, the broad position appears to be as follows. In no circumstances would the people of the States enjoy full control over "provincial" affairs. They will have a limited voice in the governance of their territory if the Central Government decide to conduct their administration through a Lieutenant-Governor or a Chief Commissioner. On the other hand, they will not have even this limited voice if by their consent the administration is entrusted to the Governor of Orissa. Even if the impossible happens and under these conditions the people of the States vote for their governance through the Governor of Orissa, the legislature of Orissa will have no concern with the administration of the States, nor will it include elected representatives of the people of the States. The legislative authority for the States will be the Union Parliament, and the executive authority for the States will be the Governor acting either in his discretion or on the advice of his Ministers—in either case, however, the Governor being responsible to the Union Executive and through them to the Union Parliament. In the absence of political integration, it will be impossible to secure administrative integration, even given all goodwill and mutual understanding. If there are 25 local Governments in 25 States, administrative integration will depend on the wishes of the 25 Governments. Even if they all agree, there will be almost insuperable practical difficulties arising largely from the fact that the administrative personnel must be under one master and not under 25 partly autonomous Governments and one fully autonomous Government or even one fully autonomous Government and one partly autonomous Government. It is impossible to visualise a common secretariat for a fully autonomous and responsible administration and a partly autonomous and partially responsible administration, the political chiefs of the two administrations being altogether different personalities. It is obvious also that it will not be possible to constitute common services

for the States and the province; eternal differences would crop up with regard to disciplinary control, postings, promotions, etc; even common Heads of Departments will not be feasible. In brief, Orissa will for ever remain apart from the Orissa States.

4. The Provincial Government venture to suggest that the scheme visualised by the drafting committee of the Constituent Assembly is impracticable, if what is proposed is separate administration of each State as a centrally administered area. At best it will mean perpetuation of all the administrative drawbacks and evils attendant on the old regime which, the Provincial Government had hoped, were gone for good. The scheme may be feasible if a union of the 25 States is constituted to form a larger political and administrative unit; but it would still be open to the grave objections to which this Government drew attention in their memorandum on the constitutional future of Orissa State which was submitted to the States Ministry in the middle of December last. As they fully explained there the only satisfactory constitutional solution so far as the Orissa States are concerned is their complete merger and unification with the province of Orissa and that none of the other possible solutions, such as

- (a) constitution of a separate province,
- (b) constitution of sub-province or
- (c) partial integration with Orissa,

is either expedient or feasible. Almost all the objections which the Provincial Government then urged against these alternative solutions applies equally well to the plan of central administration formulated by the drafting committee because the plan essentially involves the creation of a separate province or a sub-province or, perhaps, several separate provinces or sub-provinces. The Provincial Government do not wish to reiterate in detail all those objections (for a proper appreciation of which they must refer to their previous memorandum of December 1947), but briefly the main drawbacks are:

- (a) The proposed scheme would deny provincial autonomy to half of natural Orissa for which the Provincial Government can see no justification whatsoever.
- (b) The implementation of the drafting committee's scheme would involve the consequence that the unnatural division of Orissa, mainly for historical reasons, into several administrative units will be perpetuated and the right of all Oriya-speaking people to form a single autonomous unit of India will be deliberately denied. If this consequence ensues, the National Government of Independent India will do the greatest disservice and the gravest wrong to the Oriya people. The scheme proposed will in short perpetuate the

criminal dismemberment of Orissa, frustrate any hope of building up a strong, stable, prosperous and racially and linguistically homogeneous province and condemn Orissa to remain for ever an insignificant unit of the Union of India. Whatever may be the position elsewhere in India, in Orissa there cannot be the slightest doubt that all these Orissa States owe their origin as separate administrative units to mere fortuitous circumstances in comparatively recent times. The history of Garhjat and Moghalbandi is well known. These States are in every way, historically, ethnologically and culturally, inseparable parts of the old Utkal. It will be lamentable if in the new constitution all these States, mostly petty ones, are entered, as it is proposed that they should be entered, in part III of the First Schedule as separate entities. As the Provincial Government pointed out in their previous memorandum, "Orissa and Orissa States are parts of one greater whole indissolubly linked by natural and traditional ties of trade and commerce and social and cultural intercourse. They are convinced that neither part can prosper unless the other does."

- (c) Unless the States are included in the province, the provincial administration would never be either efficient or even satisfactory, as all administrative problems are common to the States and the province on account of their relative geographical situation, economic interdependence and other factors.
- (d) The States will be unable to pay their way and will be for ever a drag on the rest of the country and their own chances of development will be remote. As was pointed out in the memorandum submitted by the Provincial Government in December last, "The total revenue of all the States is just over Rs. 1 crore including revenue from the Central sources of income. If revenue from the central sources is omitted and if generous allowances are made for the Rulers' privy purses, the net revenue that will be left will be entirely inadequate for the bare needs of a provincial administration; and certainly nothing at all will be left for development of the new province."
- (e) Finally, there is really no need and no justification for setting up the States as a separate administrative unit and thereby add to the overhead cost of provincial administration in India. It is not the case that the States form a distinct racial or linguistic area apart from the province. Both

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in Orissa and in the Orissa States, Oriya is the common language barring a number of aboriginal dialects in both parts, and the people are Oriyas except the aboriginals who exist, though in a varying degree, both in the Orissa province and in the Orissa States.

5. Even if it be assumed that article 213 of the draft constitution will be suitably amended so as to permit the creation of a local legislature and/or a council of advisers in respect of "ceded" States the administration of which is by the consent of their people entrusted to the Governor of a neighbouring province, the objections which have been urged in the two preceding paragraphs would still substantially remain. If no union of the States is formed, the Central Government may set up for each State either a local legislature or a council of advisers or both and specify their constitution, powers and functions. If there is a union of the States, the Central Government may similarly set up a legislature for the union or a Council of advisers or both. In either case the Provincial Government of Orissa as such, that is, the Orissa Ministry, will not presumably function in the Orissa States. If the Central Government appoint by common consent the Governor of Orissa to administer the States, the Governor of Orissa will be the only constitutional link between the province and States. Whether the States are administered as separate political units or together as a single unit, and whether one or more local legislatures or councils of advisers are set up or not, the Orissa legislature would not be competent to legislate for the States, and the Orissa Ministry will have nothing to do with their administration except perhaps in so far as the Ministry may be able to influence that administration through the personality of the common Governor. The net result will be the same as would follow from the administration of the States through a Lieutenant Governor or a Chief Commissioner; and natural Orissa would be split up into anything between two and twenty-six separate administrative units. Consequently all the objections that have been urged in paragraphs 4 and 5 would apply with equal force to such an arrangement.

6. The Provincial Government cannot indeed help feeling that any statutory provision which would make it necessary to ascertain the wishes of the people as to whether they would prefer the States to be administered through the Governor of Orissa may have many embarrassing consequences. Even now from several quarters can be heard rumblings of anti-merger propaganda. If the President of the Union proceeds to ascertain the wishes of the people, the Provincial Government feel pretty certain that there will be very undesirable excitement in each State over the issue of merger versus non-merger

The people in many States, particularly the bigger States, might have visions of their own Ministries and Legislative Councils and separate independent existence. A good deal of public time will be wasted in all these controversies and then again there may be demands from neighbouring provinces for administration of particular States to be handed over to them. This is a possible development which must be strongly deprecated in the public interest.

As a matter of fact, the people of the Orissa States have been repeatedly assured that under the new constitution they will form parts of Orissa and will have their due share in the Provincial Legislature and administration, and further that they will be completely integrated with the present Orissa districts. It will be intolerable if under the new constitution these hopes and promises are belied and the States continue to be separate entities to be administered quite separately by the Governor exercising delegated authority from the Central Government. Though the constitution does not provide for this, it may well be argued that it will be open at any time to the President of the Union to withdraw the delegated authority and to take the administration in his own hands through a Lieutenant Governor or a Chief Commissioner. All this would lead to a new field of constant friction and agitation and excitement in the public mind.

7. The Provincial Government are accordingly strongly of the opinion that these Orissa States should lose their individual existence and be finally amalgamated completely and irrevocably with the Orissa districts just as in the Saurashtra and other unions of such States they have merged irrevocably into a bigger whole. The Provincial Government do not see any difficulty in the way of bringing about a similar union between a Governor's province and some of the States which would have the result that it would not then be necessary to mention these States at all in the list of the States in part III of the first schedule as States which have acceded to the Union. The drafting committee itself proposes that new linguistic provinces may be constituted before the constitution begins to function so that these may be mentioned in the list of Governor's Provinces. The Provincial Government must strongly press that so far as the Orissa States are concerned, they should even now be regarded as a part of natural Orissa, and it should be at once accepted that their political salvation lies in their complete merger with the province of Orissa, in other words, in their complete integration with the province by extension of its boundaries in order that the larger province may be a single administrative and political unit with a single legislature and a single executive.

8. If the strong views which the Provincial Government have

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in the matter are held to be justified and their considered recommendation is accepted, there seem to be three alternative ways of implementing it:

- (a) The solution which the Provincial Government would prefer and which appears to them to be most satisfactory is that the area of the province of Orissa should be immediately enlarged by the addition thereto of all the 25 Orissa States by an order under section 290 of the adapted Government of India Act, 1935. The Provincial Government are advised that there is no legal or constitutional objection to this course in as much as the Rulers of these States have definitely and irrevocably transferred their States to the Central Government for administration, and they have withdrawn all their rights and privileges therein excepting those specifically enumerated. For all practical purposes, the Rulers have no interest in the territories of these States or the management of their affairs except for their guaranteed allowances. The Provincial Government suggest that in these circumstances it is open to the Governor-General to declare an increase of the Province of Orissa by these States. If this order is made before the promulgation of the new constitution, it would follow that in the list of the States in part III of the First Schedule, the names of these particular States will not be mentioned at all; nor will it be necessary to follow the procedure about the ascertainment of the wishes of the people.

The Provincial Government do not consider that there are any insuperable administrative difficulties in the immediate and complete merger of the States in the Province. The States are in their view developed enough to safely permit introduction of part III of the Government of India Act. Actually during the last three months this Government have been actively engaged in the task of administrative re-organisation of the States and this work is now nearing completion. In a few weeks' time there will be a common administrative machinery in the States and in the Province and common administrative personnel in all branches of administration on the same rates of pay who will be freely interchangeable between the two parts according to administrative convenience and needs. The provincial cadres of the All-India Services are being built on the assumption that the States and the Province will be a single administrative unit having a common administration.



Further, the question of unification and integration of laws in force in the province and the States is being tackled in serious earnest; and although the process of this integration must necessarily be somewhat slow, the Provincial Government have every hope that so far as the essential laws are concerned, there will in a few months' time be just one set of them in the province and the States.

- (b) Alternatively, the Provincial Government would suggest that the new constitution should expressly contain provisions recognizing the *factum* of the *de facto* mergers that have already taken place and declare specifically, so far as Orissa is concerned, that as from the date of the coming into effect of the constitution, the province of Orissa should be deemed to have been increased by the territories of these States and the inhabitants thereof shall, like residents of Orissa, be entitled to elect their representatives to the Provincial and Central legislatures. Such provisions should leave no room for doubt that the States would for all purposes form an integral part of Orissa and that there will be no question of any delegation of authority by the Central Government to the Governor of Orissa for their administration. If this solution is preferred by the Government of India, some amending clauses will have to be inserted in the draft constitution; and the Provincial Government would be extremely grateful if they are allowed an opportunity to see the amendments in draft.
- (c) The third and in the view of the Provincial Government the least satisfactory method is to take action under articles 3 and 4 of the draft constitution. This is open to the objection that complete and legal merger of the States with the province must wait till the new constitution is inaugurated and a law is passed by the future Union Parliament uniting the States and the province of Orissa to form a single "State". It would appear that, under the proviso to article 3, two conditions will have to be fulfilled before two or more States can be united to form a new State, namely,
  - (i) the legislature of the State whose boundaries will be affected by the proposal will have to adopt a resolution in this behalf; and
  - (ii) since the proposal would affect the boundaries of a State (or States) for the time being specified in part III of the first schedule, the previous consent of the State (or States) to the proposal will have to be obtained.



The Provincial Government presumes that in respect of any proposal to unite the Orissa States with the province of Orissa with a view to form a new State, the resolution referred to in (i) will have to be passed by the Orissa Legislative Assembly. With regard to condition (ii), the position appears to be that although the States in question will be specified in part III of the First Schedule, they will be those which have ceded full and exclusive authority and jurisdiction and powers to the Government of India. The expression "State" as used in article 3 (b) can be reasonably taken to mean only the authority which has executive and legislative powers in it; and since the Government of India will exercise full executive and legislative powers in the Orissa States, the Provincial Government presume that the authority which would be competent to accord previous consent on behalf of the States will be, not their nominal Rulers, but the Government of the Union of India. If this is the correct legal and constitutional position, the Provincial Government would be prepared to wait for the enactment of the necessary law by the Union Parliament, in case the Government of India are for any reason not prepared to consider at present either of the other two alternatives (a) and (b) *provided* however they can be assured that immediately on the promulgation of the new constitution and on an appropriate resolution being adopted by the Orissa Legislative Assembly set up under that constitution, the Dominion Government will consent to the merger of the Orissa States with the province of Orissa and will thereafter introduce a bill in the Parliament for uniting the States with the province in order to form a new State.

9. For many reasons, however, the solution last mentioned in the preceding paragraph is not in the view of the Government of Orissa at all satisfactory. Apart from the fact that it is doubtful if the present Government of India can bind their successor Government to a definite course of action, the political and constitutional future of the States will under this plan continue to be uncertain for a long time to come, and there will in consequence be constant agitation and excitement in the public mind and there will be no inclination in any quarter to settle down to the hard task of giving the people of the States good and efficient administration. From all points of view, therefore, it would be definitely expedient to reach an immediate clear-cut decision on the political future of the Orissa States so that no room for uncertainty on any score may exist, all opportunities for

agitation of any sort may at once be eliminated, and all parties concerned may have time to reconcile themselves to the decision well before the new constitution is inaugurated. The Provincial Government would accordingly strongly press for the immediate acceptance of either of the alternatives (a) and (b) suggested in the preceding paragraph—and preferably the first alternative, the adoption of which would at once and for ever set at rest the controversy that has already raged for an undesirably long time over the constitutional future of the Orissa States. No matter what the position may be in regard to other States in other parts of India, for Orissa this integration of the neighbouring States with the present province is for the people of Utkal a matter of almost life-and-death importance on which might lie the whole prosperity of this part of India and its people. The Provincial Government submit that there ought not to be any hesitation on the part of the Government of India in adopting the suggested solution for which there is obviously every justification. As already stated, none can seriously challenge the basic facts that historically, culturally and ethnologically the States are inseparable and integral parts of the old Utkal; that the people of the two parts, Moghalbandi and Garhjat, are the same and are bound by the natural ties of geographical contiguity, of a common language, a common culture and common traditions, of trade and commerce and of social and cultural intercourse; that the prosperity of one part depends on that of the other; and that administrative efficiency in what is now the Province of Orissa would be perpetually hampered unless the States form an integral part of the province. The larger province which will emerge from the amalgamation of the two parts will be a completely homogeneous administrative unit, both racially and linguistically, and will have enormous possibilities of development and no minority problems. If properly developed, it will in the end be a stronger and more useful limb of the future Union of India than either the present province of Orissa or the two or more administrative units in which natural Orissa may be split up in case, unfortunately, little heed is paid to the realities of the situation and undue importance is attached to legalistic considerations and the selfish propaganda of interested parties. The aim of the Provincial Government is to build up a larger and more prosperous Oriya-speaking province which will be able to take its rightful place among the united peoples of India; and they are confident that a realistic approach to the problem will convince the Dominion Government that the solution which they have advocated is not only expedient but would be just and fair to all parties as well and would, moreover, best serve the true interests of India as a whole.

(ii)

*Proposed Amendments to the Constitution*

In Part I of the First Schedule, the following proviso shall be inserted, namely—

“Provided that the undermentioned Indian States which have ceded full and exclusive authority, jurisdiction and power to the Government of India shall be deemed to form part of the Governor’s Province of Orissa.

(Specify all the Orissa States)”

2. In Division (B) of Part III of the First Schedule, after the words “Indian States”, the following words shall be inserted, namely—

“Excluding the Indian States specified in the proviso to Part I.” and such other consequential amendments to the various sections of the New Constitution Act as may be required.

REMARKS

(By the Union ministry)

The particular amendment proposed by the Government of Orissa may be said to amount to annexation of the States in question. It is not known whether the Government of India would be prepared to go quite so far; our impression hitherto has been that the result of the Orissa type of “merger” is not to destroy the integrity of each State. In this respect it differs from the Kathiawar type of merger where the individual States have ceased to exist.

An alternative solution that suggests itself is to add the following proviso to article 212(c) of the Draft:—

“Provided that the President may at any time by Order direct that any such State or any group of such States shall be governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule; and he may by such Order give such incidental and consequential directions as may be necessary for the purpose.” Such a proviso would be on the lines of Sec. 47 of the Govt. of India Act, 1935, as adapted, which provides for the Government of Berar as one Governor’s Province along with the Central Provinces. At the same time 212 (2) itself may be slightly amended so as to read:

“Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance

of the State to the Government of India or any group of such states shall be administered in all respects as if the State or the group of States were for the time being specified in Part II of the First Schedule; and, accordingly all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State or group of States."

## MEMORANDUM ON THE DRAFT CONSTITUTION OF INDIA

By

Sir V. T. Krishnamachari,  
Mr. B. H. Zaidi,  
Raja Sardar Singhji  
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### 1. *Procedure for the accession of the Indian States*

The Draft Constitution of India expressly provides that "India shall be Union of States", and the term 'State' has been defined to include not only those territories which formerly constituted British India but also the Indian States specified in Part III of the First Schedule. The Constitution does not, however, contain any provision for the acceptance by the States of the Constitution as finally approved by the Constituent Assembly. In this connection, it should be remembered that the Constituent Assembly has full legislative power and authority in respect of the territories which were formerly known as British India, since, under the Indian Independence Act, the British Parliament has completely divested itself of all authority in respect of these territories. But the Constituent Assembly, as such, has no power of framing any constitution for the territories comprised in the Indian States. It has, as the Dominion Legislature, powers in respect of certain specified subjects by virtue of the Instrument of Accession executed by the States. It is, therefore, not clear as to how the Constitution, as finally approved by the Constituent Assembly, will be made binding on the Indian States. In a unitary State the process of constitution-making is simple. There the Constituent Assembly has all powers and authority, and it may frame any constitution of any character for the entire State. The technique is, however, somewhat complex where two or more separate and independent States wish to join together to form a new State under a new

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Constitution. Two different procedures have generally been adopted in such cases. In the first place, the States concerned may conclude an agreement by virtue of which a Constituent Assembly is created with the power to frame a constitution subject to such conditions as may be expressly specified in that agreement. Such, for instance, was the case when the constituent units of the Argentine Republic concluded what is known as *pacta pre-esistente* under which a Constituent Assembly was set up to frame the Argentine Constitution. Exactly similar was the case when the first Soviet Constitution of 1924 was established. A Treaty of Amalgamation between the constituent States preceded the establishment of the Constituent Assembly for the purpose of drafting the constitution. This procedure cannot, however, be adopted in the case of the Indian States, since the Draft Constitution has already been prepared by a Committee of the Constituent Assembly.

The alternative is that the constitution finally approved by the Constituent Assembly should be ratified by the governments and legislatures of the States. The Union Constitution Committee set up by the Constituent Assembly appears to endorse this procedure. This is what the Committee says: "Under the Act of 1935, accession was to be evidenced by 'Instruments of Accession' executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed." This procedure does not, however, preclude the possibility of any of the States seceding from the Indian Union at the instance of its legislature, since no legislature can restrict for ever the freedom of action of its successors. What a legislature has ratified today may be annulled by it tomorrow. The procedure would, therefore, appear to be equally inapplicable if India is to be an "indestructible Union of indestructible States".

It is, therefore, clear that the solution of the problem has to be found in the procedure adopted in the Government of India Act, 1935, i.e., the Indian States should adhere to the constitution framed by the Constituent Assembly by the execution of an Instrument of Accession, the detailed particulars of which should be set forth in the Constitution itself. We would also suggest that negotiations should be initiated without further delay for the settlement of the terms and conditions of the agreements referred to in Articles 225 and 258 of the Draft Constitution.

Further, there is nothing in the Draft Constitution relating to the position of the Rulers of the States. On the other hand, the agreements which have recently been executed by some of the Rulers transferring full power and authority to the Government of India

expressly provide that the rights, privileges and dignities of the Rulers are guaranteed by the Dominion Government. A similar provision should, therefore, appear in the Instrument of Accession.

## 2. Definition of the term 'State' under the Draft Constitution

Under clause (1) of Article 1 of the Draft Constitution, India has been described as a "Union of States" irrespective of the fact whether the constituent units are the Governors' Provinces, Chief Commissioners' Provinces or the Indian States, although the distinction between the Provinces and the States has been maintained under clause (2) for certain specific purposes. The term 'State' has all along been associated in India with an Indian State where the sovereignty is *de jure* vested in the Ruler. A proper distinction was maintained between the Indian States and the Provinces in the Government of India Act, 1935. The distinction has also been maintained under the India (Provisional Constitution) Order, 1947. The change now suggested in the Draft Constitution will not only create confusion in the interpretation of the various Articles of the Constitution but is also bound to prejudice the special juristic status of the Indian States. It is, therefore, suggested that in view of the traditional polity of the States, their position in the constitutional set-up of India and the fact that the Rulers of the States will continue to be the heads of the States as constitutional monarchs, it would be desirable to maintain in the Constitution distinction between the Indian States and the Provinces by suitable differentiation in nomenclature. Indeed, the term 'Indian State' has been retained in the Draft for certain purposes, as for example, in the designation "Indian State Railway".

## 3. The territory of India

Clause (3) of Article 1 provides that the territory of India shall, *inter alia*, comprise the territories of the States; and this means that it will include the territories of the Provinces as well as of the Indian States. It is not understood why this provision has been found to be necessary. Geographically this is no doubt correct but constitutionally it is not. Strictly speaking, the territories of a constituent unit cannot become the territories of a Union of India for all purposes, but can only be considered as part and parcel of the Indian Union for certain specific purposes.

Further, a provision of this nature is not to be found in most of the federal constitutions. For instance, under the American Constitution, a clear distinction is made between the territories of the Union and the territories of the States. The territories of the Union are not states of the Union. They do not possess full powers even of local self-government. They are subject to the exclusive jurisdiction

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and legislation of Congress. The same position is occupied by the District of Columbia. A similar differentiation has been made in the Constitution Act of the Commonwealth of Australia. Thus, under Section 123 of the Act, "the Parliament may make laws for the governance of any territory surrendered by any State to and accepted by the Commonwealth". Under this provision the Northern Territory was surrendered by South Australia to the Commonwealth and became a "Territory of the Commonwealth" (per Isacacs, J. in *Buchanan v. The Commonwealth*, 16 C.L.R. at pages 334-335). The same distinction also exists in the federal constitutions of Argentina, Brazil, Mexico and Venezuela. Similarly the constitution of the U.S.S.R. speaks of the territory of a Union Republic and not of the territory of the Union (Article 18).

The only exceptions to this general rule are to be found in the now defunct federal constitution of Austria and the Weimar Constitution of Germany. But it should be remembered that in both these cases the federal character of the constitution had been reduced to the vanishing point and that both the States had for all practical purposes become what the German jurists have called *Einheitsstaat* or Unitary State.

For these reasons it is suggested that clause (3) of Article 1 should be deleted.

#### 4. *Distribution of legislative powers between the Union and the Indian States*

As regards this important subject, the States desire that the following position should be clearly recognised in the Constitution as well as in the Instrument of Accession:—

(i) That the States will retain all subjects and powers other than those expressly ceded to the Union. This position was accepted by the Negotiating Committee appointed by the Constituent Assembly on the 21st December 1946, as the following extract from the Committee's report will show:

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's statement said: 'The States will retain all subjects and powers other than those ceded to the Union'. That is perfectly clear, we accept that statement, we accept that entirely." This has been further clarified in Pandit Nehru's letter to the President of the Constituent Assembly forwarding the Report of the Union Powers Committee. Pandit Nehru says: "It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have joined the Constituent



Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider power to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre."

(ii) That the terms "State List" and "Concurrent List" will not be applicable to the Indian States. The Union Constitution Committee has also recommended that "the States shall be on a par with Provinces as regards the Federal legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared."

(iii) That the adherence of the Indian States to the Union should be in respect of such items of the Union list as are considered to be essential to the greater interests of India as a whole. The criterion for determining the subjects which should be assigned to the Union may be thus summarised in the words of Sir John Quick: "It is submitted that this section of the Constitution is based on the true Federal principle, that the present division of power between the Federation and the States is truly Federal. What concerns the whole of Australia should be reserved to the Federal Parliament, and what concerns each particular part or State of Australia should be reserved to the part or State. There is, therefore, a logical differentiation of power based, not on the difference in commerce itself, but on the operation of commerce. A branch of trade or commerce which begins in a State and ends in a State, is reserved to the State, because the State alone is interested in it, but when the course of trade and commerce moves across the boundary, and enters another State, it becomes Federal, because more than one State is interested, and it admits of laws of general application. Trade and commerce matters which are internal or domestic, may be fairly left to be dealt with by the State authorities. What concern, for instance, has the State of New South Wales in the internal shop-keeping arrangements of the State of Victoria?" (*The Legislative Powers of the Commonwealth and the States of Australia* at page 310 )

On this basis, we have no doubt that the States will be prepared to accede to more subjects than are included in the present



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Instrument of Accession. A supplementary memorandum on this issue will be forwarded at an early date.

(iv) We would also point out that Article 227 should be controlled by Article 225, as the position is not entirely free from ambiguity. Article 225 uses the words 'notwithstanding anything in this Chapter'. Article 227 contains the expression 'notwithstanding anything in the foregoing provisions of this Chapter'. The use of the words 'notwithstanding anything in the foregoing provisions of this Chapter' in Article 227 may render the provisions of Article 225 nugatory. It is, therefore, desirable and necessary that Article 225 should be entered after Article 230.

(v) Article 226 is anti-federal in character and does not find a place in any federal constitution. We, therefore, suggest that this Article should be deleted.

(vi) Article 230 of the Draft Constitution reads as follows: "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries." This is an anti-federal provision, and there is no reason why the Union should be thus allowed to invade the sphere earmarked for the constituent Units. The correct position in regard to this matter is contained in section 106(1) of the Government of India Act, 1935, which runs thus: "The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any provinces except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof". The States urge that this provision should be incorporated in the new Constitution. In this connection, reference may be made to the Privy Council decision in *Attorney General for Ontario and others* (1937 A.C. page 326). In this case, the Privy Council ruled as invalid certain Acts of the Canadian Parliament regulating conditions of labour in various ways, as the legislation related to a Provincial subject, although it was sought to be justified on the ground that it was required to give effect to certain International Conventions which had been ratified by the Dominion of Canada. "The Dominion cannot merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth.\*\*\* It must not be thought that the result of this decision is that Canada

is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation be concerned, when they deal with provincial classes of subjects, be dealt with by co-operation between the Dominion and the Provinces”.

#### 5. *Administrative Relations between the Union and the States*

Clause (2) of Article 234 reads as follows: “The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance”. Such a provision is entirely anti-federal and no such executive power should vest in the Union Government. It is, no doubt, true that a similar provision did exist in the Government of India Act, 1935, but its application was confined entirely to the provinces. There is no reason why it should now be made applicable to any constituent State of the Indian Union, particularly as powers under items 31 and 32 of the Union List should be adequate and satisfactory.

It is also suggested that the following provisions should be incorporated in the Constitution:—

(1) That in the exercise of the executive authority of the Union in any State regard shall be had to the interests of that State. Similar provision is to be found in the Government of India Act, 1935, which was applicable to the Provinces as well as the States. There is no reason why it should not be repeated in the new Constitution. In this connection, attention is invited to the marginal note of Article 233 which speaks of the ‘obligation of States and Union’ but there is no substantive provision relating to the obligation of the Union in this matter.

(2) That it should be possible for any constituent unit so desiring to conclude agreement with the Union Government for the exercise by that Unit of functions in relation to the administration of any law of the Union Legislature which applies therein. The Government of India Act, 1935, as well as the India (Provisional Constitution) Order, 1947, provided for such agreements with the Indian States. Similar provisions are to be found in the federal constitutions of Switzerland, the German Reich of 1919, and the Republic of Austria of 1929.

#### 6. *Provisions relating to the Judiciary*

Clause (1) of Article 100 provides that no discussion shall take

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place in the Parliament with respect to the conduct of any Judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge. Clause (2) is so worded as to permit motions for removal of Judges of High Courts in States. This cannot have been intended. We suggest the deletion of this clause.

Clause (i) to the proviso to Article 109, in effect, abrogates the general provisions of Article 109 as stated in clauses (a), (b) and (c). A judicial pronouncement by the Supreme Court of India on any dispute even though it is covered by any treaty, agreement, engagement, Sanad or other similar instrument entered into or executed before the date of the commencement of this Constitution is more appropriate and honourable. The States, therefore, suggest that irrespective of any provisions to the contrary provided in any such treaty, agreement, etc., every dispute arising out of such treaty, agreement etc., should be cognizable by the Supreme Court of India. This will involve the deletion of clause (i) of the proviso to Article 109 and the consequential omission of clause (2) of Article 119.

Article 117 of the Draft Constitution provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India". The territory of India will also include the Indian States, and, presumably, this Article is intended to be applicable to the Indian States. There is, however, no justification for extending the application of this provision. The courts of an Indian State might consider it proper and reasonable on grounds of justice, equity and good conscience to accept the law declared by the Supreme Court, but strictly speaking, the courts of an Indian State cannot be saddled with a statutory obligation to follow the law declared by the Supreme Court in respect of such matters as are not within the jurisdiction of the Indian Union in regard to an Indian State. This principle has been recognised in section 212 of the Government of India Act, 1935, adapted by the India (Provisional Constitution) Order, 1947. Therefore, Article 117 of the draft should accordingly be amended.

Clause (1) of Article 238 provides that "full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State." Clause (3) of this Article further provides: "Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law". The proviso to this Article, however, lays down that this Article will only be applicable to an Indian State if it has conceded to the Union the Powers to make laws with respect to Criminal Pro-

cedure, Civil Procedure and the Law of Evidence, etc. This proviso is totally unjustifiable. In the first place, it directly contradicts the practice under which the public acts and records of an Indian State were recognised in British India provided they were duly authenticated. Secondly, the restriction which the draft constitution proposed to impose on the authority of an Indian State is without any precedent in any federal constitution. For instance, section 118 of the Australian Constitution provides that "full faith and credit shall be given throughout the Commonwealth to the laws, public acts and records, and the judicial proceedings of every State", although the Commonwealth Parliament has no power to make laws in respect of Criminal Procedure, Civil Procedure, or the Law of Evidence. Similarly, under the Constitution of the United States of America, "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State", although Criminal Procedure, Civil Procedure and the Law of Evidence are not within the jurisdiction of the Federal Government.

#### 7. *Emergency Powers of the Union Government*

Part XI of the Draft Constitution contains provisions relating to the exercise of certain powers by the President of the Union during a period of emergency. All these powers are of an extraordinary nature. Some of them also militate against the fundamental principle of federalism and do not find any parallel whatsoever in any other Federal Constitution. For instance, the Constitution of the United States does not contain any such provision. It restricts itself to recognising in direct terms the possibility of adopting exceptional measures by declaring that the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety might require it. The reason for this attitude has been thus explained by the Supreme Court in *Ex parte Milligan*: "The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false, for the Government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence." The same argument could legitimately be advanced in the case of India. It may, however, be pointed out that the prototype of the plan embodied in the Draft Constitution is to be found in the system of *etat de siege* which obtains in France. The system of

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*estado de sitio* incorporated in the Federal Constitutions of the Latin American States is also modelled on the French pattern. These examples do not, however, lend support to the provisions contained in the Draft Constitution, since there are striking differences between the two systems as noted below:—

(i) The Draft Constitution empowers the President of the Union to declare a state of emergency, and such a declaration remains in force for a period of six months unless it is extended by a resolution of both Houses of Parliament. In France, on the other hand, a state of emergency can only be declared by the Legislature by virtue of a special law enacted for the purpose. If the Legislature is not in session, the President may declare a state of emergency, but he is bound to convene the Legislature within a period of two days. In Mexico, *estado de sitio* can be declared by the President but only with the concurrence of the Legislature or of the Standing Commission when the Legislature is not in session. In Brazil, the Constitution clearly states that the authority competent to declare “the state of siege” is the National Congress, the executive exercising the emergency powers only in case the Congress is not in session.

(ii) Under the provisions of the Draft Constitution the Proclamation of Emergency may cover the whole of India. This is not the case in the other Constitutions. In France, for instance, the Proclamation must specify the department to which it is intended to apply. Similarly, under the Federal Constitutions of the Latin American States a declaration of the state of siege for the whole country is not warranted.

(iii) The Draft Constitution authorises the President of the Union to suspend the constitutional guarantees. No such power can be exercised under the system obtaining in France as there the people continue to enjoy their fundamental rights in spite of the declaration of *etat de siege*.

(iv) Under the Draft Constitution, the Union Government may invade the sphere of executive authority assigned to a component State. Such a provision does not exist in any other constitution.

(v) The Draft Constitution makes it quite clear that the President may suspend the operation of the financial settlement contained in the Constitution. This has no parallel in any other Federal Constitution.

It may be conceded that in the event of war or threat of war, it may become imperatively necessary to vest extraordinary powers in

the Union Government, although, it is quite clear that adequate and satisfactory powers can be claimed by the Union Government under the items relating to Defence in the Union List as well as under Item 77 of the same list. There is, however, no jurisdiction for claiming such powers in the event of domestic violence, particularly as under the Constitution the Governors of the States will have adequate authority to deal with any situation of emergency and, presumably, the Rulers of Indian States will have similar powers. If, however, it is deemed necessary to retain these provisions, the following amendments should be made:—

(i) The Proclamation of Emergency should apply only to those constituent States or parts of States which are directly threatened by war or domestic violence.

(ii) The Proclamation should be applicable to a constituent State threatened by war or domestic violence only when the government of the State asks for such Proclamation or has totally failed to cope with the situation.

(iii) The issue of directions under Article 276(a) should be confined to the States which have been threatened by war or domestic violence.

(iv) There is no justification for Article 277, and the President of the Union Government should have no authority under the constitution to suspend the operation of the financial settlement embodied in the Constitution.

The provisions contained in the Draft Constitution deal only with the rights and powers of the Union in the event of grave emergency. There is no reference anywhere in the Draft to the obligations which necessarily devolve on the Union Government in such cases. For instance, all Federal Constitutions expressly and specifically provide that it is the duty of the Central Government to protect every component State against external aggression or domestic violence. Section 119 of the Australian Constitution Act imposes on the Commonwealth the duty to protect every State against invasion and, on the application of the executive government of the State, to protect every State against domestic violence. Section 51 of the Australian Defence Act, therefore, provides: "Where the Governor of a State has proclaimed that domestic violence exists therein, the Governor-General, upon the application of the Executive Government of the State, may, by proclamation, declare that domestic violence exists in that State, and may call out the Permanent Forces, and in the event of their numbers being insufficient may also call out such of the Militia and Volunteer Forces, as may be necessary for the

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protection of that State, and the services of the Forces so called out may be utilised accordingly for the protection of that State against domestic violence". A similar provision, almost in the same words, is to be found in the Constitution of the United States. Under the Swiss Constitution, the authorities of a Canton are entitled to ask for aid not only from the Federal Government but also from other Cantons in case of sudden danger of foreign attack. The authorities of the Cantons have similar rights in the case of internal disturbance or if danger is threatened by another Canton. The Constitution of the Argentine Republic provides that the Federal Government have the right to intervene in the territory of the units to "repel external invasions and, upon the requisition of their constituted authorities, to support or re-establish them if they have been displaced by an insurrection or by invasion from another Province." Similar provisions exist in other Federal Constitutions.

It is, therefore, suggested that there should be a specific clause in the Constitution on the following lines: "It shall be the duty of the Union to protect every State against external aggression and, upon a request from the executive government of a State, to protect or restore the duly constituted authorities of that State in the event of domestic violence or insurrection".

### 8. *Financial Relations between the Union and the Constituent States*

Article 258 of the Draft Constitution authorises the Union to conclude agreements with the Indian States with regard to the levy, collection and distribution of taxes and duties. The Article runs thus:

"(i) Notwithstanding anything contained in this Chapter, the Union may, subject to the provisions of clause (2) of this article enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

"(ii) An agreement entered into under clause (i) of this article shall continue in force for a period not exceeding ten years from the commencement of this Constitution.

"Provided that the President may at any time after the expiration of five years from such commencement terminate or



modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so”.

These provisions are not, however, in consonance with the recommendations made in this behalf by the Union Powers Committee appointed by the Constituent Assembly. The Committee made the following recommendations: “We realise that in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidence, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreement between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendations”.

It is clear that the provisions of the Draft Constitution depart from these recommendations on several points. In the first place, the maximum period for the currency of the agreement has been reduced from fifteen to ten years. There is, however, no reason why the duration of the agreements in question should be curtailed. Secondly, the proviso to this Article authorises the President of the Union to terminate or modify any such agreement if, after consideration of the report of the Finance Commission, he thinks it necessary to do so. This appears to be an extremely unfair provision. Besides, it is contrary to the very nature of an agreement that one of the parties should be allowed to terminate it without the concurrence of the other party.

For these reasons, the States would strongly urge that Article 258 of the Draft Constitution should be so amended as to incorporate *in toto* the recommendations made by the Union Powers Committee.

Article 266 of the Draft Constitution provides that the Government of a State shall not be liable to Union Taxation in respect of lands or buildings within the territory of India, or income accruing, arising, or received within such territory. This exemption does not, however, cover any income arising in respect of trade or business or any operations connected therewith. There is, however, no reason why income arising from the public utility undertakings of any constituent unit should be liable to central taxation. Nor is there any justification for taxing any income arising or accruing from trade or business carried



on by a constituent unit within its own territory. We would, therefore, urge that Article 266 should be amended accordingly.

Article 16 defines the fundamental right regarding freedom of trade, commerce and intercourse throughout the Union subject, however, to certain exceptions in this behalf as specified in Article 244. In this connection, reference may be made to paragraph 5 of the Interim Report submitted by the Advisory Committee on the subject of Fundamental Rights, which may be quoted here in extenso:—

“Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the Constitution, by which internal customs could be eliminated and complete free trade established within the Union.”

Articles 16 and 244 are not in consonance with the letter and spirit of the observations made in the paragraph cited above in so far as these relate to the levy of internal customs by some of the Indian States. The States would, therefore, urge that Article 244 may be amended accordingly.

## 9. *Other Provisions of the Draft Constitution*

### (1) *CITIZENSHIP*

Part II of the Draft deals with the question of citizenship. Under Article 6 of this Part, Parliament may by law make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto. Under the Seventh Schedule, ‘citizenship’ falls within the exclusive jurisdiction of the Union. It would, therefore, follow that as soon as a law relating to citizenship has been passed by the Union Parliament, the local laws of nationality in force in the Indian States would cease to be operative. But one of the salient features of every federal system is the principle of double citizenship. There are, in every Federal Constitution, a Government of the Federation and a Government of each of the component States. Each of these Governments is distinct from the other, and each has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the Federation and a citizen of a State. But his rights of citizenship in one of these Governments will be different from those

which belong to him under the other. The Supreme Court of the United States has thus clarified the position: "The distinction between citizenship of the United States and citizenship of a State is clearly recognised and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within a State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual." (*United States V. Cruickshank*, 92 U.S. 542).

It is, therefore, suggested that a proviso should be added to Article 6 of the Draft preserving the right of the Legislature of a constituent State to deal with the question of citizenship for the local purposes of the State.

## (II) FUNDAMENTAL RIGHTS

Part III of the Draft Constitution deals with fundamental rights, and it has been expressly made applicable to the Indian States. The following provisions in this Part require special consideration from the point of view of States:—

(a) Clause (1) of Article 12 provides that no title should be conferred by the State. The provisions of this clause are, however, inconsistent with the provisions of clause 7 recommended by the Advisory Committee on the subject of fundamental rights which says that no heritable title shall be *conferred by the Union*. There is no reason why the Rulers of Indian States should be deprived of their prerogative to confer titles on their subjects. We would, therefore, suggest that Article 12 should be amended suitably in the light of the provisions of the clause recommended by the Advisory Committee.

(b) Clause (1) of Article 25 guarantees the right to move the Supreme Court of India by appropriate proceedings for the enforcement of the fundamental rights. This means that the jurisdiction of the Courts of the Indian States will be entirely ousted in respect of this matter. There does not appear to be any substantial reason behind this proposal. It would be more appropriate if Article 25 were amended to provide that in respect of an Indian State the highest judicial tribunal in that State should in the first instance be moved for the enforcement of any fundamental rights and that the jurisdiction of the Supreme Court of India should be invoked by an aggrieved person by way of revision or appeal. This amendment is all the more necessary in view of the provisions of Article 280 of the Draft

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Constitution. This Article provides for the suspension of the enforcement of fundamental rights under Article 25 where a Proclamation of Emergency is in operation. This Article does not, however, relate to the suspension of the enforcement of fundamental rights in respect of an Indian State. In these circumstances, an extremely serious situation may arise where the Ruler of a State may, in the event of an emergency, suspend the enforcement of fundamental rights but the Supreme Court of India would still be competent to hear a petition in this behalf, as the Order of the Ruler of the State will not be binding on the Supreme Court. The same view has been taken by the Ad hoc Committee of the Constituent Assembly which was appointed to consider the constitution and powers of the Supreme Court. This is what it said: "Clause 22 of the draft of the Fundamental Rights provided that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court shall have appellate jurisdiction, including powers or revision."

### (III) PREROGATIVE OF PARDON, ETC.

Sub-clause (c) of clause (1) of Article 59 provides that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in all cases where the sentence is a sentence of death. It is no doubt provided in clause (3) of the same Article that the provisions of the aforementioned sub-clause (c) shall not affect the power to suspend, remit or commute a sentence of death exercisable by the Ruler of an Indian State under any law for the time being in force. But this clause does not override the right of a convict to prefer an appeal or revision against the order of the Ruler to the President who may then even rescind such order. This right flows from the aforementioned provisions of Article 59 as they stand now. At present the power referred to in sub-clause (c) of clause (1) of Article 59 vests exclusively in the Ruler of an Indian State and this is, in fact, a prerogative inherently vesting in him. We, therefore, suggest that finality should be attached to an order passed by a Ruler in any such case and sub-clause (c) of clause (1) and clause (3) Article 59 should be suitably amended so as

to confine their operation to the Governors' Provinces and the Chief Commissioners' Provinces only.

(IV) ELECTION OF THE PRESIDENT OF THE UNION

According to Article 67(1) and (2), the Council of State is to consist of two hundred and fifty members of whom fifteen members having special knowledge or practical experience in respect of certain specified matters are to be nominated by the President. Article 43 provides that the President shall be elected by the members of an electoral College consisting of—

- (a) *the members* of both Houses of Parliament, and
- (b) *the elected members* of the legislatures of the States.

Thus although under sub-clause (a) the elected as well as the nominated members of the Council of States will be the members of the electoral College to be constituted for electing the President, but so far as the State Legislatures are concerned, their elected members only will be members of that College under sub-clause (b). This is an invidious distinction between the nominated members of the Council of States and the nominated members of a State legislature for which there is no justification. We, therefore, suggest that the word "elected" occurring in clause (b) of Article 43 should be deleted.

(V) ALLOCATION OF SEATS IN THE UNION PARLIAMENT

It has not been expressly stated in the Draft Constitution as to what criterion or principle shall be adopted in allocating seats in the Council of States to the various Units forming the Union. It is, therefore, suggested that such criterion or principle should be definitely specified in Article 67 of the Constitution itself.

In view of the general principle enunciated in sub-clause (b) of clause (5) of Article 67 according to which seats in the House of the People are to be allocated to the various Units forming the Union, the proviso to this sub-clause appears to be redundant.

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SUPPLEMENTARY MEMORANDUM ON THE DRAFT  
CONSTITUTION OF INDIA

By

Sir V. T. Krishnamachari  
Mr. B. H. Zaidi  
Raja Sardar Singhji of Khetri  
Sardar Jaidev Singh

In our previous Memorandum we have stated what we consider to be the principal criterion for determining the subjects which States

## SUPPLEMENTARY MEMORANDUM ON THE DRAFT CONSTITUTION

should assign to the Union. The underlying principle of our recommendation is: what concerns the whole of India should be ceded to the Union Parliament, and what concerns each particular part or State should be reserved to the part or State. On this basis, we feel that the States would be prepared to accede in respect of a large number of the items included in the Union List, subject to the following observations:—

1. *Item 4.* The words “the strength, organisation and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule” should be substituted by the following: “the strength of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule and the organisation and control of such part of these forces as may by agreement be earmarked for service with the Union forces.”

2. *Item 7.* The following words should be added at the end of this item: “In the States for the time being specified in Parts I and II of the First Schedule, and the administration of cantonments in States for the time being specified in Part III of the First Schedule”.

3. *Item 11.* The words “and trade” after the word “consular” should be deleted.

4. *Items 13 and 14.* The following should be added at the end of each item: “Provided that the Union shall not by reason only of this entry have power to implement such decisions for a State for the time being specified in Part III of the First Schedule except with the previous consent of the State”.

5. *Item 19.* The following should be added at the end: “Provided that the Legislature of a State for the time being specified in Part III of the First Schedule shall be competent to make laws regulating citizenship for the purposes of the State”.

6. *Item 47.* This item should be re-drafted as follows: “Banking, that is to say, the conduct of banking business by Corporations other than Corporations owned or controlled by the Government of a constituent State and carrying on business only within that State”.

7. *Item 49.* The following words should be added: “other than State Insurance”.

8. *Item 74.* This item should be re-drafted as follows: “Development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power to the extent to which development under the control of the Union is declared by Parliament by law to be expedient in the public interest”.

9. *Item 78.* The words “or the Government of any State” should be deleted.

10. *Item 79.* The words “and taxes other than stamp duties on transactions therein” should be deleted.

11. *Item 91.* This item should not be applicable to an Indian State.

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FINAL DRAFT OF ARTICLE 306A [JAMMU & KASHMIR] AS  
SETTLED BETWEEN THE HON'BLE SHRI N. GOPALASWAMY  
AIYANGAR ON THE ONE SIDE AND MESSRS. BEG AND  
SHAWMIRI ON THE OTHER ON OCTOBER 16, 1949

306A. (1) Notwithstanding anything contained in this Constitution,

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify;

*Explanation:—*

For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers appointed under the Maharaja's Proclamation dated the 5th March 1948.

(c) the provisions of article 1 of this Constitution shall apply in relation to the State;

(d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State;

Provided further that no such order which relates to matters other than those referred to in the preceding proviso shall be issued except with the concurrence of that Government;

(2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso of sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon;

(3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify;

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification.

*Draft Article 306A as proposed by the Kashmir Government*

306A. Notwithstanding anything contained in this Constitution, until on the recommendation of the Constituent Assembly constituted for the purpose of framing the Constitution of the Jammu and Kashmir State (hereinafter referred to as the State in this Article) the President may, by public notification, alter, modify or amend this Article,

(a) Only such provisions of this Constitution shall apply in relation to the State as are declared by the President, in consultation with the Government of the State, to relate directly to the matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India;

(b) The power of Parliament to make laws for the State shall be limited to:—

those matters in the Union List and the Concurrent List which are declared by the President, in consultation with the Government of the State, to correspond to matters specified in the Instrument of Accession governing the accession of that State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State.

*Explanation:—*

The Government of the State in this Article means the person for the time being recognised as the Maharaja of the State by the Union acting on the advice of the Council of Ministers as at present constituted and not acting in his discretion or in his individual judgment.

*New article 306A (as finally settled)*

That for article 306A, the following article be substituted:—

“306A. Notwithstanding anything contained in this Constitution, until such date as, on the recommendation of the Constituent Assembly constituted for the purpose of framing the Constitution for the State, the President may by public notification announce to be the date on which this article shall cease to be operative,—

Temporary provisions with respect to the State of Jammu and Kashmir.

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for that State shall be limited to—

(i) those matters in the Union List and the Concurrent List which after consultation with the Government of the State are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of that State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State, and

(ii) such other matters in the said Lists as with the concurrence of the Government of that State the President may by order specify;

(c) the provisions of Part V and Parts IX to XVII of this Constitution shall apply in relation to that State subject to such exceptions and modifications as after consultation with the Government of the State the President may by order specify:

Provided that in so far as such provisions relate to any matter referred to in sub-clause (ii) of clause (b) of this article, they shall apply in relation to that State subject to such exceptions and modifications as with the concurrence of the Government of that State the President may by order specify.



## CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

*(December, 1946 to July 31, 1947)*

### I. STATES COMMITTEE

This Committee was set up by the Constituent Assembly by a resolution on 21st December, 1946. The personnel of the Committee is given in the resolution as set out below:—

“This Assembly resolves that the following members, namely:—

\* (1) Maulana Abul Kalam Azad,

(2) The Hon'ble Pandit Jawaharlal Nehru,

(3) The Hon'ble Sardar Vallabhbhai Patel,

(4) Dr. S. Pattabhi Sitaramayya,

(5) Mr. Shankarrao Deo, and

(6) The Hon'ble Sir N. Gopalaswamy Aiyangar,  
do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

(a) fixing the distribution of the seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of States should be returned to this Assembly, and thereafter to report to the Constituent Assembly the result of such negotiation.

The Assembly further resolves that not more than three other members may be added to the committee later and that they be elected by the Assembly at such time and in such manner as the President may direct.”

Certain additional powers were conferred on this committee by a subsequent resolution of the Assembly dated 22nd January, 1947:—

“This Assembly resolves that the Committee constituted by its Resolution of December 21, 1946 (to confer with the Negotiating Committee set up by the Chamber of Princes and with other repre-

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\* Since resigned.

sentatives of Indian States for certain specified purposes) shall in addition have power to confer with such persons as the Committee thinks fit for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly the result of such examination."

(The Hon'ble Pandit Jawaharlal Nehru is the Chairman of the Committee).

## II. STAFF AND FINANCE COMMITTEE

### *Chairman*

The President of the Assembly.

### *Members*

- |                                |                                       |
|--------------------------------|---------------------------------------|
| 1. Dr. H. C. Mookherjee        | } Vice-Presidents of the<br>Assembly. |
| 2. Sir V. T. Krishnamachari.   |                                       |
| 3. Shri Satyanarayan Sinha.    |                                       |
| 4. Shri Jaipal Singh.          |                                       |
| 5. Shri V.I. Muniswami Pillai. |                                       |
| 6. Shri N.V. Gadgil.           |                                       |
| 7. Seth Govind Das.            |                                       |
| 8. Shri Sri Prakasa.           |                                       |
| 9. Rajkumari Amrit Kaur.       |                                       |
| 10. Shri Bhawanji A. Khimji.   |                                       |
| 11. Shri K. Santhanam.         |                                       |

This Committee was set up under rule 42\* of the Constituent Assembly Rules, which is as follows:—

"42(1) A Staff and Finance Committee shall be set up for the duration of the Assembly and shall consist of—

- (a) the President, who shall be *ex-officio* Chairman of the Committee,
- (b) the two *Vice-Presidents*, and
- (c) nine other members to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.

(2) The functions of the Committee shall be—

- (a) to advise the President regarding the posts to be created in the office of the Assembly, and the salaries and emoluments to be attached thereto;

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\* Now Rule 41.

## CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

(b) to recommend to the Assembly the allowances to be paid to the officers and members of the Assembly and its committees; and

(c) to frame a budget or supplementary budget for submission to the Assembly.

(3) The President may make standing orders for the conduct of the business of the Committee.

(4) The Staff and Finance Committee shall invite the Auditor-General to audit the accounts of the Assembly."

### III. CREDENTIALS COMMITTEE

#### *Chairman*

Sir Alladi Krishnaswami Ayyar.

#### *Members*

1. Dr. P.K. Sen,
2. Bakshi Sir Tek Chand,
3. B. Pocker Sahib Bhadur,
4. Shri Ram Sahai.

This Committee was set up under rules 43 and 44\* of the Constituent Assembly Rules, which are as follows:—

"43. A Credentials Committee shall be set up for the duration of the Assembly for the purpose of dealing with all questions relating to the validity of the title of elected or other members.

44.(1) The Committee shall consist of five members who shall be elected by the Assembly.

(2) The Committee shall have power to co-opt additional members not exceeding two in number.

(3) Casual vacancies in the Committee shall be filled as soon as they occur by election by the Assembly or by co-option, as the case may be.

(4) The Committee shall elect its own Chairman.

(5) The President may make standing orders for the conduct of the business of the Committee."

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\* Now rules 42 and 43.

IV. HOUSE COMMITTEE

*Chairman*

\*Dr. B. Pattabhi Sitaramayya.

*Members*

1. Shri Dip Narain Sinha,
2. Shri Nandkishore Das,
3. Shri Mohan Lal Saksena,
4. Shri H. V. Kamath,
5. Shri R. R. Diwakar,
6. Shrimati Ammu Swaminathan,
7. Ch. Mohd. Hassan,
8. Shri Upendra Nath Barman,
9. Shri Jainarain Vyas,
10. Shri B. Shiva Rao,
11. Shri Deshbandhu Gupta. } Co-opted on 28th  
January 1947.

This Committee was set up under rule 45\*\* of the Constituent Assembly Rules, which is as follows:—

“45.(1) A House Committee shall be set up for the duration of the Assembly for the purpose of dealing with all questions relating to housing and accommodation of members, to provide for and to supervise over facilities for food, medical relief, entertainments and reading room and library during their stay.

(2) The Committee shall consist of eleven members who shall be elected by the Assembly in the manner to be prescribed by the President.

(3) The Committee shall have power to co-opt additional members and to appoint sub-committees to deal with various items of their work.”

A Sub-Committee of the House Committee was appointed on 28th January, 1947, for advising on the actual allotment of accommodation to members. The Sub-Committee consists of the following:—

1. Shri B. Shiva Rao.
2. Dr. B. Pattabhi Sitaramayya.
3. Shri Mohan Lal Saksena.
4. Shri Deshbandhu Gupta.

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\* Co-opted on 28th January, 1947.

\*\* Now rule 44.

V. STEERING COMMITTEE

*Chairman*

President of the Constituent Assembly.

*Members*

1. The Hon'ble Sardar Vallabhbhai Patel,
2. Shrimati G. Durgabai,
3. Mr. S.H. Prater,
4. Shri Satyanarayan Sinha,
5. Shri M. Ananthasayanam Ayyangar,
6. Shri K.M. Munshi,
7. Diwan Chaman Lall,
8. Shri P. Govinda Menon,
9. Shri C.S. Venkatchar,
10. Saiyid Mohd. Saadulla,
11. Mr. Abdul Kadar Mohd. Shaikh,
12. Shri Surendra Mohan Ghose,
13. Shri Jagat Narain Lal,
14. Acharya J.B. Kripalani,
15. Gyani Gurmukh Singh Musafir,
16. Shri K. Chengalaraya Reddy,
17. Shri Balwant Rai Mehta,
18. Shri R.M. Nalavade,
19. Shri Suresh Chandra Mazumdar.

This Committee was set up under rules \*40 and 41 of the Constituent Assembly Rules, which are as follows:—

“40(1) A Steering Committee shall be set up for the duration of the Assembly and shall consist initially of eleven members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.

(2) The Assembly may from time to time elect, in such manner as it may deem appropriate, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States.

(3) The President shall be an *ex-officio* member of the Steering Committee and shall be its *ex-officio* Chairman. The Committee may elect a Vice-Chairman from among its members to preside over the Committee in the absence of the President.

(4) The Secretary of the Assembly shall be *ex-officio* Secretary of the Steering Committee.

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\* Now rules 39 and 40.

(5) Casual vacancies in the Committee shall be filled as soon as possible after they occur by election by the Assembly in such manner as the President may determine.

41(1) the Committee shall—

- (a) arrange the order of business for the day;
- (b) group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments;
- (c) act as a general liaison body between Committees *inter se*, and between the president and any part of the Assembly: and
- (d) deal with any other matter under the rules or referred to it by the Assembly or the President.

(2) The President may make standing orders for the conduct of the business of the Steering Committee.

## VI. THE ADVISORY COMMITTEE

This Committee was set up by the Constituent Assembly on 24th January, 1947, by the following resolution:—

“This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission’s statement of May 16, 1946, an Advisory Committee be constituted as hereinafter set out:—

1.(a) The Advisory Committee shall consist of not more than 72 members who may include persons who are not members of the Assembly.

(b) It shall consist initially of the following members:—

- 1. Shri Jairamdas Daulatram.
- 2. The Hon’ble Shri Mehr Chand Khanna.
- \*\*3. Dr. Gopi Chand Bhargava.
- \*\*4. Bakshi Sir Tek Chand.
- \*\*5. Dr. Profulla Chandra Ghose.
- 6. Shri Surendra Mohan Ghose.
- 7. Dr. Syama Prasad Mookherjee.
- 8. Shri Prithvi Singh Azad.
- 9. Shri Dharam Prakash.
- 10. Shri H.J. Khandekar.
- 11. The Hon’ble Shri Jagjivan Ram.

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\* As amended on 15th July, 1947.

\*\* Since resigned.

CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

12. Shri P.R. Thakur.
13. Dr. B.R. Ambedkar.
14. Shri V.I. Muniswami Pillai.
15. Sardar Jogendra Singh.
16. The Hon'ble Sardar Baldev Singh.
17. Sardar Pratap Singh.
18. Sardar Harnam Singh.
19. Sardar Ujjal Singh.
20. Gyani Kartar Singh.
21. Dr. H.C. Mookherjee.
22. Dr. Alban D'Souza.
23. Shri P.K. Salve.
24. Shri J.L.P. Roche-Victoria.
25. Mr. S.H. Prater.
26. Mr. Frank Reginald Anthony.
27. Mr. M.V.H. Collins.
28. Sir Homi Mody.
29. Shri M.R. Masani.
30. Shri R.K. Sidhwa.
31. Shri Rup Nath Brahma.
32. Khan Abdul Gaffar Khan.
33. Khan Abdul Samad Khan.
34. The Hon'ble Rev. J.J.M. Nichols-Roy.
- \*35. Shri Mayangnokcha.
36. Shri Phool Bhan Shah.
37. Shri Devendra Nath Samanta.
38. Shri Jaipal Singh.
39. Acharya J.B. Kripalani.
40. The Hon'ble Maulana Abul Kalam Azad.
41. The Hon'ble Sardar Vallabhbhai Patel.
42. The Hon'ble Shri C. Rajagopalachariar.
43. Rajkumari Amrit Kaur.
44. Shrimati Hansa Mehta.
45. The Hon'ble Pandit Govind Ballabh Pant.
46. The Hon'ble Shri Gopinath Bardoloi.
47. The Hon'ble Shri Purushottamdas Tandon.
48. Sir Alladi Krishnaswami Ayyar.
49. Prof. K.T. Shah.
50. Shri K.M. Munshi.

(c) The President may at any time or at different times nominate members to the Committee not exceeding 22, 7 of whom shall

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\* Since resigned.

be Muslims representing the Provinces of Madras, Bombay, the United Provinces, Bihar, the Central Provinces, Orissa, and Assam.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the administration of the North-Western tribal areas, the North-Eastern tribal areas and the excluded and partially excluded areas. Each of such Sub-Committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the time being, to assist it in its work in relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem necessary.

3A. The quorum for the Committee or any of its Sub-Committees shall be one-third of the total number of members for the time being of the Committee or of the Sub-Committee concerned.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months from the date of this Resolution and may submit interim reports from time to time, but shall submit an interim report on Fundamental Rights within ten weeks of such date.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur by nomination by the President.

6. The President may make standing orders for the conduct of the proceedings of the Committee."

Since the passing of the above Resolution, the President nominated the following additional members to the Committee:—

1. Shri Amrital V. Thakkar.
2. Mr. M. Ruthnaswami.
3. Shri Raj Krishna Bose.
4. Sardar K. M. Panikkar.
5. Shri Aliba Imti.
6. Maulana Hafizur Rahman.
7. Syed Ali Zaheer.
8. The Hon'ble Mr. Abdul Qayum Ansari.
9. Chaudhri Khaliquzzaman.
10. Saiyid Mahammad Saadulla.
11. The Hon'ble Mr. Ismail Chundrigar.
12. Saiyid Jafar Imam.
13. Haji Abdul Sathar Haji Ishaq Sait.
14. Shri Kasturbhai Lalbhai.
15. Maharajadhiraja Sir Kameshwara Singh of Darbhanga.
16. Shri N. Madhava Rau.



CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

17. Dr. Mohan Sinha Mehta.
18. Shri M.S. Aney.
19. Darbar Gopaldas Desai.
20. Shri Gokulbhai Bhatt.
21. Shri K. Chengalaraya Reddy.
22. Seth Govind Das.
23. Pandit Lakshmi Kanta Maitra.
24. Pandit Thakur Das Bhargava.

(The Hon'ble Sardar Vallabhbhai Patel was elected the Chairman of the Committee).

The following are the Sub-Committees of the Advisory Committee:—

(1) *Minorities Sub-Committee*

1. Dr. H. C. Mookherjee—*Chairman*.
2. The Hon'ble Shri Jagjivan Ram.
3. The Hon'ble Maulana Abul Kalam Azad.
4. Dr. B. R. Ambedkar.
5. Sardar Jogendra Singh.
6. Dr. Shyama Prasad Mookherjee.
7. Sardar Ujjal Singh.
8. Sardar Harnam Singh.
9. Shri H. J. Khandekar.
10. Shri P. R. Thakur.
11. Sir Homi Mody.
12. Shri P. K. Salve.
13. Mr. S. H. Prater.
14. Mr. Frank Reginal Anthony.
15. The Hon'ble Shri C. Rajagopalachariar.
16. Rajkumari Amrit Kaur.
17. Shri Jairamdas Daulatram.
18. Shri R. K. Sidhwa.
19. Shri Rup Nath Brahma.
20. Mr. M. Ruthnaswamy.
21. Mr. M. V. H. Collins.
22. Dr. Alban D'Souza.
23. Shri K. M. Munshi.
24. The Hon'ble Pandit Govind Ballabh Pant.
25. Maulana Hafizur Rahman.
26. Syed Ali Zaheer.
27. The Hon'ble Mr. Abdul Qayum Ansari.

28. Chaudhri Khaliquzzaman.
29. The Hon'ble Mr. Ismail Chundrigar.
30. Saiyid Muhammad Saadulla.
31. Shri Kasturbhai Lalbhai.
32. Maharajadhiraja Sir Kameshwara Singh of Darbhanga.
33. Seth Govind Das.
34. Pandit Lakshmi Kanta Maitra.
35. Pandit Thakur Das Bhargava.

(2) *Fundamental Rights Sub-Committee*

1. Acharya J.B. Kripalani—*Chairman*.
  2. Shri M.R. Masani.
  3. Prof. K.T. Shah.
  4. Rajkumari Amrit Kaur.
  5. Sir Alladi Krishnaswami Ayyar.
  6. Shri K.M. Munshi.
  7. Sardar Harnam Singh.
  8. The Hon'ble Maulana Abul Kalam Azad.
  9. Dr. B.R. Ambedkar.
  10. Shri Jairamdas Daulatram.
  11. Shrimati Hansa Mehta.
  12. Sardar K.M. Panikkar.
- } Nominated by the President.

(3) *North-East Frontier Tribal Areas and Assam excluded and partially excluded areas Sub-Committee*

1. The Hon'ble Shrijut Gopinath Bardoloi—*Chairman*.
  2. The Hon'ble Rev. J.J.M. Nichols-Roy.
  3. Shri Rup Nath Brahma.
  4. Shri Aliba Imti.
  5. Shri A.V. Thakkar.
  6. Shri Khawtikhuma.
  7. Shri Saprawnga.
  8. Shri Surat Daolagopu, B.A.
  9. Shri C.T. Tnaga Biete.
  10. Mr. Harison W. Momin.
  11. Shri Maniram Marak, M.L.A.
  12. Shri S.S. Engti, B.A.
  13. Shri K.S. Terang, M.L.A.
  14. Shri Khelhoshe—Co-opted for Kohima.
  15. Shri Josing Rynja.
  16. Shri Larsingh Khyriem, M.L.A.
- } Co-opted for Lushai Hills Area.
- } Co-opted for Halflong Area.
- } Co-opted for Gauhati.
- } Co-opted for Lumding Area.
- } Co-opted for Khasi and Jaintia Hills Area.

(4) *Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee*

1. Shri A.V. Thakkar—*Chairman*.
2. Shri Jaipal Singh.

## CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

3. Shri Devendranath Samanta.
4. Shri Phool Bhan Shah.
5. The Hon'ble Shri Jagjivan Ram.
6. Shri Raj Krushna Bose.
7. Shri Khetramani Panda—Co-opted for Phulbani Area.
8. Shri Sadasiv Tripathi—Co-opted.
9. Shri Damber Singh Gurung—Co-opted for Darjeeling Dist.
10. Shri Kodanda Ramiah—Co-opted for Madras Partially Excluded Areas.
11. Shri Sneha Kumar Chakma—Co-opted for Chittagong Hill Tracts.

### VII. COMMITTEE TO RECOMMEND THE ORDER OF THE FURTHER BUSINESS OF THE ASSEMBLY IN FRAMING THE CONSTITUTION FOR ALL INDIA

This Committee was set up by a resolution of the Constituent Assembly on 25th January, 1947. The personnel of the Committee is given in the resolution:—

“This Assembly resolves that a committee consisting of—

1. The Hon'ble Sir N. Gopalaswamy Aiyangar.
2. Shri K. M. Munshi.
3. Shri Biswanath Das

be appointed to recommend the order of the further business of this Assembly in framing the Constitution for all India and to submit its report before the commencement of the next session of this preliminary meeting of this Assembly.

This Assembly further resolves that the presence of not less than two members of the Committee shall be necessary to constitute a meeting of the Committee.”

(Shri K. M. Munshi was elected the Chairman of the Committee).

### VIII. COMMITTEE TO EXAMINE THE SCOPE OF UNION SUBJECTS

This Committee was set up by the Constituent Assembly by a resolution on 25th January 1947. The personnel of the Committee is given in the resolution:—

“Whereas in paragraph 15(i) of the Cabinet Delegation's Statement of May 16th, the subjects assigned to the Union Centre are generally and compendiously indicated under four broad categories, and

Whereas an understanding of the scope of these subjects is necessary for the purpose of framing the Union and other Constitutions, of avoiding as far as possible overlapping and conflicts between

the provisions in the Constitution relating to the Union and those in the Constitutions referred to in clause (v) of paragraph 19 of the Statement, and of bringing all the said Constitutions into line with each other, and

Whereas it is necessary to draw up lists of matters included in and inter-connected with the subjects assigned to the Union before the framing of the Constitution referred to in clause (v) of paragraph 19 of the Statement is taken up for consideration,

This Assembly resolves

(a) that a committee consisting initially of the following members:—

1. The Hon'ble Pandit Jawaharlal Nehru.
- \*2. Shri Sarat Chandra Bose.
3. Dr. Pattabhi Sitaramayya.
4. The Hon'ble Pandit Govind Ballabh Pant
- \*5. Shri Jairamdas Daulatram
6. Shri Biswanath Das
7. The Hon'ble Sir N. Gopalaswamy Aiyangar
8. Bakshi Sir Tek Chand
9. Sir Alladi Krishnaswami Ayyar
10. Shri D.P. Khaitan
11. Shri M.R. Masani
12. Shri K.M. Munshi

be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947.

(b) that the President may add ten more persons to the committee and that the selection of all or any of these ten additional members be made at such time and in such manner as the President may determine,

(c) that the quorum for the Committee shall be one-third of the total number of members for the time being of the Committee, and

(d) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members of the Assembly."

Since the passing of the above Resolution, the President nominated the following additional members to the Committee:—

1. Sir B.L. Mitter.
2. Sir V.T. Krishnamachari.
3. Sir A. Ramaswami Mudaliar.
4. Col. Shri Maharaj Himmat Singhji.

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\* Since resigned.

## CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

(The Hon'ble Pandit Jawaharlal Nehru was elected the Chairman of the Committee).

*Note:*—The Secretary of the Assembly is the Secretary of Committees I to VIII.

### IX. UNION CONSTITUTION COMMITTEE

1. The Hon'ble Pandit Jawaharlal Nehru—*Chairman*.
2. The Hon'ble Pandit Govind Ballabh Pant.
3. The Hon'ble Shri Jagjivan Ram.
4. Dr. B.R. Ambedkar.
5. Shri Alladi Krishnaswami Ayyar.
6. Shri K.M. Munshi.
7. Prof. K.T. Shah.
8. Sir V.T. Krishnamachari.
9. Sardar K.M. Panikkar.
10. Sir N. Gopalaswamy Aiyangar.
11. Shri P. Govinda Menon.
12. Shri M.A. Srinivasan.
13. Mr. B.H. Zaidi.

### X. PROVINCIAL CONSTITUTION COMMITTEE

1. The Hon'ble Sardar Vallabhbhai Patel—*Chairman*.
2. The Hon'ble Dr. P. Subbarayan.
3. Dr. B. Pattabhi Sitaramayya.
4. Shri B.G. Kher.
5. Shri Brijlal Biyani.
6. The Hon'ble Dr. K.N. Katju.
7. Shri Phulan Prasad Verma.
8. The Hon'ble Shri Harekrushna Mahtab.
9. Shri Rohini Kumar Choudhury.
10. Diwan Chaman Lall.
11. Dr. P.K. Sen.
12. Shri C.M. Poonacha.
13. Shri Satyanarayan Sinha.
14. The Hon'ble Mr. Rafi Ahmad Kidwai.
15. Shrimati Hansa Mehta.
16. Rajkumari Amrit Kaur.
17. Dr. H.C. Mookherjee.
18. Acharya J.B. Kripalani.
19. Shri Shankarrao Deo.
20. Shri R.R. Diwakar.
21. Shri S. Nagappa.

These two Committees (IX and X) were set up by the following resolution of the Constituent Assembly of 30th April, 1947:—

“This Assembly resolves that in accordance with the recommen-

dations contained in the Report of the Order of Business Committee, the following Committees be nominated by the President with instructions to report before the next session of the Assembly:—

- (1) a committee consisting of not more than 15 members to report on the main principles of the Union Constitution;
- (2) a committee consisting of not more than 25 members to report on the main principles of a model Provincial Constitution."

#### XI. AD HOC COMMITTEE ON CITIZENSHIP CLAUSE

1. Sir S. Varadachariar—*Chairman*.
2. Sir Alladi Krishnaswami Ayyar.
3. Sir B.L. Mitter.
4. Bakshi Sir Tek Chand.
5. Dr. K.N. Katju.
6. Dr. B. R. Ambedkar.
7. Shri K.M. Munshi.

This Committee was appointed on 30th April 1947 by the President of the Constituent Assembly.

#### XII. AD HOC COMMITTEE ON NATIONAL FLAG

*Chairman*

President of the Constituent Assembly.

*Members*

1. The Hon'ble Maulana Abul Kalam Azad.
2. The Hon'ble Shri C. Rajagopalachariar.
3. Shrimati Sarojini Naidu.
4. Sardar K.M. Panikkar.
5. Shri K.M. Munshi.
6. Dr. B. R. Ambedkar.
7. Mr. Frank Anthony.
8. Dr. B. Pattabhi Sitaramayya.
9. Pandit Hiralal Shastri.
10. Shri Satyanarayan Sinha.
11. The Hon'ble Sardar Baldev Singh.
12. Shri S.N. Gupta.

This Committee was appointed on 23rd June 1947 by the President of the Constituent Assembly.

#### XIII. COMMITTEE TO RECOMMEND SUITABLE CONSTITUTIONAL CHANGES IN THE ADMINISTRATIVE SYSTEMS OF THE CHIEF COMMISSIONERS' PROVINCES

1. Sir N. Gopalaswamy Aiyangar.
2. Dr. B. Pattabhi Sitaramayya.

## CONSTITUENT ASSEMBLY OF INDIA COMMITTEES

3. Shri K. Santhanam.
4. Shri Deshbandhu Gupta.
5. Pandit Mukut Bihari Lal Bhargava.
6. Shri C.M. Poonacha.
7. Mr. Hussain Imam.

### XIV. PRESS GALLERY COMMITTEE

1. Sir Usha Nath Sen—*Chairman* (Associated Press of India).
2. Mr. Durga Das—*Vice-Chairman* (Hindustan Times).

#### *Members*

3. Mr. J.N. Sahni (National Call).
4. Mr. Mohd. Jaffri (Ajmal & Inqilab).
5. Mr. Charan Sarkar (United Press of India).
6. Mr. Manzurul Huq (Orient Press of India).
7. Mr. Sri Krishna (Mail, Andhra Patrika, Dinasari, Pioneer, Bombay Chronicle, Capital, Star of India, Sind Observer).
8. Mr. K. Gopalaswami (Times of India).
9. Mr. Walker Mason (Associated Press of America).
10. Mr. Ramgopal (Arjun).
11. Mr. P.D. Sharma—*Secretary* (Janmabhumi, Hindustan Standard).

The Committee was appointed on 7th January 1947 by an executive order of the President of the Assembly. The Committee advises the President in allotting passes for the Press Gallery.

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